DIGEST OF CASES REPORTED IN THE SOLICITORS' JOURNAL & WEEKLY REPORTER VOLUME 58.

ACCUMULATION :—

1. *Will—Construction—Accumulation directed during lives of annuitants—Period defined by will not extended by codicil giving further annuity—Thellusson Act* (39 & 40 *Geo.* 3, *c.* 98).—By his will a testator directed his trustees to pay annuities to five persons named therein, and to accumulate the surplus income of his estate during their lives and the life of the survivor. By a codicil he directed a sixth annuity to be paid. The testator died in 1868, the last survivor of the will annuitants in 1882, and the codicil annuitant in 1911.

Held (reversing the decision of Eve, J.), that the codicil could not be read into the earlier part of the will so as to extend the period of accumulation beyond 1882, and that the accumulations of surplus income made since that date were not undisposed of, but fell into residue.—Re Cresswell, *C.A.*, 360.

2. *Will—Minority of person born after testator's death—Accumulations Act*, 1800 (39 & 40 *Geo.* 3, *c.* 98), *s.* 1.—A testator devised his real estate to be held in trust for the benefit of his grandchildren, and provided that a grandchild's share should be accumulated during its minority.

Held, that the fourth rule in Thellusson's Act did not prohibit the accumulation from taking effect during the minority of a child born after the death of the testator.—Re Cattell, *C.A.*, 67 ; 1914, 1 Ch. 177.

ADMINISTRATION :—

1. *Creditor's action—Executors carrying on business of testator—Right of executors to indemnity for debts so incurred—Rights as between creditors of testator and subsequent creditors of executors—Acquiescence not amounting to express assent.*—Executors, one of whom was sole beneficiary under the testator's will, continued to carry on his business for their own benefit for four years after his death, with the knowledge of, but not by arrangement with, the creditors of his estate ; the executors having incurred debts to new creditors while so carrying on the business.

Held, on the application of such new creditors, that in the circumstances the executors were not entitled to any indemnity in respect of liabilities so incurred in priority to the original creditors, who, although they knew that the executors were carrying on the business, had given them no express authority to do so.

Dowse v. *Gorton* (1891, A. C. 190) distinguished.

Dictum of Kekewich, J., in *Re Brooke* (1894, 2 Ch. 600) dissented from.—Re Oxley, *C.A.*, 319 ; 1914, 1 Ch. 604.

2. *Intestacy—Children taking by representation—Debt of parent to the intestate—Statute of Distribution*, 1670 (22 & 23 *Car.* 2, *c.* 10)—*Original title of the children.*—Where a father had covenanted with his brother to pay off a mortgage debt, and had died without carrying out such covenant, leaving four children, and the brother had subsequently died intestate,

Held, that the four children were entitled to receive their share of the personal estate of the intestate without first making good to the estate of the intestate the moneys secured by the mortgage ; for although they did in fact take a distributive share between them as the persons who legally represented their father, yet they nevertheless took by original title, and not under or through their father.

Re Gist, Gist v. *Timbrill* (1906, 1 Ch. 58), followed.—Re White, *Sargant, J.*, 611.

See also Executors.

APPEAL :—

Practice—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 *Vict. c.* 39)—*Refusal of court of summary jurisdiction to enforce maintenance order—King's Bench Division the appellate tribunal.*—An appeal from the refusal of a court of summary jurisdiction to enforce an order for maintenance made under the provisions of the Summary Jurisdiction (Married Women) Act, 1895, lies to the King's Bench Division upon a case stated, and not to the Probate, Divorce and Admiralty Division.—Adams *v.* Adams, *P.D.*, 613.

APPOINTMENT :—

Power of appointment—Excessive exercise—Power to appoint to children "then living"—Appointment to children generally—Validity of exercise as to objects in being at period of distribution.—The donee of a testamentary power of appointment among her issue who should be living at her death exercised the power, and appointed to all her children, at twenty-one or marriage, settling daughters' shares upon them and their children, and disregarding the condition of surviving her contained in the power.

Held, that the appointment was valid as regards all issue who were in existence at the death of donee.

Harvey v. *Stracey* (1 Drew. 73) followed.—Re Witty, *C.A.*, 30 ; 1913, 2 Ch. 666.

See also Settlement.

APPROPRIATION :—

Trust for sale—Absolute discretion in trustees to sell "as and when they shall think fit"—Difficulty of realization—Summons for liberty to appropriate in specie—Unauthorized investments—Settled shares—Jurisdiction of the court.—Where there was a trust for sale, coupled with an absolute discretion in the trustees to sell "as and when they shall think fit," and the property consisted of leaseholds which it was very difficult to realize, and the trustees applied to the court for liberty to make an appropriation in specie, the court granted the application and sanctioned the proposed appropriation.

The principle of *Re Brooks, Coles* v. *Davis* (1897, 76 L. T. 771), applied.

Re Beverley, Watson v. *Watson* (1901, 1 Ch. 681), distinguished.—Re Cooke's Settlement, *Astbury, J.*, 67 ; 1913, 2 Ch. 661.

ASSURANCE COMPANY :—

Transfer from one company to another—Dispensing with notice to policy-holders—Assurance Companies Act, 1909 (9 *Ed.* 7, *c.* 49), *s.* 13.—On an amalgamation or transfer under the Assurance Companies Act, 1909, s. 13, the court will, where the policies are very numerous and of small value, dispense with the statutory notice to small policy-holders, but this will only be done where other steps are taken to inform the policy-holders of the proposed arrangement, and to give them an opportunity of objecting to the same.—Re Hearts of Oak Life and General Association Co., *Eve, J.*, 433.

ATTACHMENT :—

Company—Contempt of court—Powers of court.—The court cannot make an order of attachment against a limited company, but it may, upon a rule for attachment, order the company to pay a fine.—Rex *v.* Hammond, *K.B.D.*, 513 ; 1914, 2 K. B. 866.

AUDITORS :—

Misfeasance—Auditors—Duties of—Legal knowledge—Balance-sheet—Ultra vires *payments—Companies (Consolidation) Act*, 1908 (8 *Ed.* 7, *c.* 69), *s.* 113.—Auditors of a company are bound to make themselves acquainted with their duties under the articles of the company whose accounts they are auditing, and also under the Companies Acts for the time being in force, and if damage results from the balance-sheets not shewing the true financial condition of the company, the *onus* is on the auditors to shew that such damage was not caused by any breach of their duty.

Spackman v. *Evans* (1868, L. R. 3 H. L. 171) and *Thomas* v. *Devonport Corporation* (1900, 1 Q. B. 16) followed.

But held, on the facts of this case, that it had not been shewn that the shareholders would have taken any proceedings against the directors even if the point had been expressly put before them, so that no damage had resulted from the auditors' action in the

matter.—Re Republic of Bolivia Exploration Syndicate (No. 2), *Astbury, J.*, 321 ; 1914, 1 Ch. 139.

BANKER :—

Cheque—Signature per pro—*Payment by agent of cheques into his private account—Ratification by principal—Liability of bank—Bills of Exchange Act*, 1882 (45 & 46 *Vict. c.* 61), *ss.* 25, 82.—In 1888 the plaintiff gave the National Provincial Bank written authority to pay all cheques drawn by A., his manager, per pro the plaintiff. In 1907 A. opened a private account with the defendants, and in fraud of the plaintiff he drew cheques on the National Provincial Bank *per pro* the plaintiff payable to himself, and paid them into his private account. From May, 1907, to November, 1911, fifty cheques had been so drawn and paid by A. into his private account.

Held, that, with respect to the cheques drawn during 1907 and 1908, the defendants did not act without negligence, but that the plaintiff had ratified the acts of A.

Held, also, that with respect to the cheques drawn during the years 1909-11 the defendants ought not to be deprived of the protection of the Bills of Exchange Act, 1882, s. 82.

Decision of Coleridge, J., reversed.—Morison *v.* London County and Westminster Bank, *C.A.*, 453.

BANKRUPTCY :—

1. *Act of bankruptcy—Deed of assignment for the benefit of creditors—Assent of petitioning creditor—Retainer of solicitor to conduct an action—How far binding on creditor—Bankruptcy Act*, 1883 (46 & 47 *Vict. c.* 52), *s.* 4, *sub-section* (1) (*a.*).—A retainer to a solicitor to conduct an action does not authorize him after judgment to assent on behalf of the plaintiff to a deed of assignment executed by the defendant for the benefit of his creditors.—Re a Debtor, *Bkcy.*, 416.

2. *Act of bankruptcy—Married woman—Bankruptcy notice—Bankruptcy Act*, 1913 (3 & 4 *Geo.* 5, *c.* 34), *s.* 12, *sub-sections* (1) *and* (2).—Where a married woman carries on a trade or business, and a final judgment has been obtained against her since the coming into operation of the Bankruptcy Act, 1913, that judgment is available for bankruptcy proceedings against her by bankruptcy notice, although it is in respect of a liability incurred before the Act came into operation.—Re Hollis & Son, *Bkcy.*, 784.

3. *Appeals—Money's worth involved not over £50—Bankruptcy Rules*, 1886-1914, *r.* 129 (1) (*a*).—Rule 129 (1) (a) which forbids the bringing of an appeal without leave where the money or money's worth involved in the proceedings does not exceed £50 applies to the money's worth involved in the proceedings in the court of first instance, and if that exceed £50 an appeal may be brought without leave, though the money's worth involved in the proceedings on appeal be less than £50.—Re Arnold, *Bkcy.*, 635.

4. *Bankruptcy notice—Counter-claim which could not be set up in the action in which judgment was obtained—Bankruptcy Act*, 1883, *s.* 4 (1, *g*).—A debtor can set up in answer to a bankruptcy notice a counter-claim which he could not in fact have set up in the action in which judgment was obtained, although he might, if he had chosen, have made it possible to set up the counter-claim in such action.—Re A Debtor, *Bkcy.*, 784.

5. *Costs—Motion by trustee before obtaining sanction of Board of Trade or Committee of Inspection—Bankruptcy Act*, 1883, *ss.* 22, 57, 73.—The fact that a trustee in bankruptcy has served a notice of motion before obtaining the sanction of the Board of Trade or of the Committee of Inspection does not disentitle him from recovering the whole of the costs of such motion against the respondents.—Re Branson, *Bkcy.*, 416 ; 1914, 2 K. B. 701.

6. *Discovery—Private examination—Production of documents—Bankruptcy Act*, 1883 (46 & 47 *Vict. c.* 56), *s.* 27 ; *s.* 66, *sub-section* 1.—Where a witness is summoned before the court for examination under section 27 of the Bankruptcy Act, 1883, and required to produce documents in his custody relating to the debtor, his dealings or property, the court has no jurisdiction to order the witness to give up such documents to the official receiver or trustee for the purpose of removing them out of the custody of the court in order to take copies of them.—Re Ash, Ex parte Hatt, *Bkcy.*, 174.

7. *Execution—Receipt of the full amount of the levy by judgment creditor—Withdrawal of sheriff—Receiving order against debtor within less than fourteen days—"Completion of execution"—Bankruptcy Act*, 1883 (46 & 47 *Vict. c.* 52), *s.* 45—*Bankruptcy Act*, 1890 (53 & 54 *Vict. c.* 71), *s.* 11.—An execution creditor who receives from the debtor the full amount for which he has levied execution, and withdraws the sheriff, is not entitled to retain such amount if a petition upon which a receiving order is made be presented against the debtor within fourteen days of the receipt of the money.—Re Godding, *Bkcy.*, 221 ; 1914, 2 K. B. 70.

8. *Fraudulent conveyance—Act of bankruptcy—Transfer bankrupts' business to limited company—Bankruptcy Act*, 1883, *s.* 4, *sub-section* 1 (*b*)—13 *Eliz. c.* 5.—The bankrupts, being in difficulties, transferred their business to a company in consideration of debentures of the nominal value of £20,000, and shares to the nominal value of £5,000. None of the debentures were issued to the bankrupts, but 13,225 were issued or given to particular creditors, leaving an insufficient number of debentures to satisfy the creditors, who impeached the validity of the transfer, and had refused to accept debentures.

Held, that the transfer necessarily tended to defeat and delay creditors, and was void as a fraudulent conveyance under section 4, sub-section 1 (b), of the Bankruptcy Act, 1883.

Re Harris (54 W. R. 460, 14 Mans. 127) distinguished.—Re David and Johnson, *Bkcy.*, 340 ; 1914, 2 K. B. 694.

9. *Life policy—After-acquired property—Premiums paid by debtor—No knowledge of trustee—Second bankruptcy—Death of assured—Rights of trustee in first bankruptcy as against trustee in second bankruptcy—Bankruptcy Act*, 1883 (46 & 47 *Vict. c.* 52), *s.* 44 (*i*).—The debtor became bankrupt at Truro in 1900. On the 29th of November, 1907, he took out a policy on his life for £1,000 without disclosing it to the trustee. On the 28th of August, 1908, he obtained his discharge. On the 6th of October, 1913, he was adjudicated bankrupt in London, and on the 27th of October, 1913, he was killed in a motor accident. He had paid all the premiums due on the policy without the knowledge of the trustee in the first bankruptcy. The trustee in the second bankruptcy collected the proceeds of the policy, and claimed to retain thereout the amount of the premiums paid by the bankrupt.

Held, that the trustee in the first bankruptcy was entitled to the proceeds of the policy without any deduction in respect of the premiums.

Tapster v. *Ward* (53 Solicitors' Journal, 503 ; 101 L. T. 25, 503) followed.

Re Tyler (1907, 1 K. B. 865) distinguished.—Re Phillips, *Bkcy.*, 364 ; 1914, 2 K. B. 689.

10. *Mutual dealings—Set off—Insolvent company—Winding-up—Secured creditor—Mortgage of chattels—Insurance in the name of the creditor—Receipt of the insurance money before winding-up—Surplus after deducting secured debt—Set-off against unsecured debt—Bankruptcy Act*, 1883 (46 & 47 *Vict. c.* 52), *s.* 38—*Companies (Consolidation) Act*, 1908 (8 *Ed.* 7, *c.* 69), *s.* 207.—Where there has been clear mutuality dealings between A and B, and no specific contract ousting the operation of section 38 of the Bankruptcy Act, 1883, A, having a surplus after deducting his secured debt, can set that surplus off against the unsecured debt of B, and prove for the balance in the bankruptcy of B or in the winding-up of the B company, as the case made be.—Re Thorne & Son, *Astbury, J* 755.

11. *Order and disposition—Mortgage of book debts—Receiver—Bankruptcy of mortgagee—Notice of assignment to debtors—Bankruptcy Act*, 1883 (46 & 47 *Vict. c.* 52), *s.* 44, *sub-section* 2 (*iii.*); *s.* 49.—The mere appointment of a receiver under an assignment of book debts, unaccompanied by notice to the book debtors, in no case operates to take such book debts out of the order and disposition of the bankrupt.

Dicta of Stirling, J., in *Rutter* v. *Everitt* (1905, 2 Ch., at p. 881) doubted.—Re Neal, *Bkcy.*, 536 ; 1914, 2 K. B. 910.

12. *Preferential payments—Workmen's compensation—Costs of obtaining awards under Workmen's Compensation Act*, 1906—*Preferential payments in Bankruptcy Act*, 1888 (51 & 52 *Vict. c.* 62), *s.* 1—*Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 6), *s.* 5, *sub-section* 3.—The costs of obtaining an award under the Workmen's Compensation Act, 1906, are not payable in priority to all other debts in a bankruptcy.—Re Jinks, *Bkcy.*, 741.

13. *Private examination—Service of notice of motion before applying for the examination of the respondent—Special circumstances—Bankruptcy Act*, 1883 (46 & 47 *Vict. c.* 52), *s.* 27.—The trustee claimed that certain money in the banking account of a stranger formed part of the property of the bankrupt. In order to prevent the stranger from dealing with the money, he served notice of motion upon her, and obtained an *interim* injunction before examining her under section 27.

Held, that the above facts constituted such special circumstances as to entitle the trustee to proceed with the examination of the respondent under section 27, although he had already commenced proceedings against her.—Re Aarons, *Bkcy.*, 581.

14. *Proof—Contract involving personal skill—Death of contracting party—Administration of estate of deceased in bankruptcy—Contract for payment of commission on procuring subscription for*

shares—Companies (Consolidation) Act, 1908 (8 *Ed.* 7, *c.* 69), *s.* 89 —*Bankruptcy Act*, 1883 (46 & 47 *Vict. c.* 52), *ss.* 37, 44, 125.—A contract to procure subscriptions for shares in a limited company is not a contract for personal service which is terminated by death or bankruptcy, but passes to the trustee of a deceased debtor, whose estate is being administered according to the law of bankruptcy; and a proof is admissible against the estate for damages for breach of such contract. As the prospectus of the company stated that 5,000 shares were to be allotted to the deceased for his services in forming such company, it was held that the contract was not invalid for any infringement of the provisions of section 89 of the Companies (Consolidation) Act, 1908.—RE WORTHINGTON, *Bkcy.*, 252; 1914, 2 K. B. 293.

15. *Property of bankrupt—Order or disposition—Bankruptcy Act*, 1883 (46 & 47 *Vict. c.* 52), *s.* 44, *sub-section (iii.).*—Goods which would not pass to the trustee as being in the order or disposition of the bankrupt, if they were on the bankrupt's premises, will not pass to the trustee if they are lying in the warehouse of a third party in the name of the bankrupt.—RE KELLER, EX PARTE ROSE, *Bkcy.*, 155.

16. *Receiving order—"Sufficient cause" for refusal of receiving order—Existence of valid deed of assignment—No assets—Bankruptcy Act* 1883 (46 & 47 *Vict. c.* 52), *s.* 7, *sub-section* 3.—Even in a case where the debtor has assigned all his assets to a trustee for the benefit of creditors by a deed which has become unimpeachable by lapse of time, the court will not refuse to make a receiving order unless clearly convinced, not only that there are, but also that there will be, no assets in the bankruptcy.—RE SCOTT, EX PARTE PARIS-ORLEANS RAILWAY CO., *C.A.*, 11.

17. *Scheme of arrangement—Approval by the court—Reasonable security for the payment of 7s. 6d. in the pound—Bankruptcy Act*, 1890 (53 & 54 *Vict. c.* 71), *s.* 3 (9).—The "reasonable security" for the payment of 7s. 6d. in the pound required as a condition of the approval of a scheme of arrangement must be such security as will ensure the payment of that amount either at once or within a short period of time.

Re Burr (1892, 2 Q. B. 467) followed.
Re Bottomley (10 Morr. 262) explained.—RE WEBB, *C.A.*, 581.

18. *Taxation of costs—Right of bankrupt to attend taxation of trustee's costs—Bankruptcy Act*, 1883 (46 & 47 *Vict. c.* 52), *rr.* 112–124, *General Regulations*, 16, 17.—When a bankrupt is in a position to pay the debts in and costs of his bankruptcy in full, and has a surplus left over, the registrar has discretion to allow him to attend the taxation of the trustee's costs, and should exercise such discretion in favour of the bankrupt as he is the person by whom the costs have to be paid.—RE GEIGER, *Bkcy.*, 757.

BASTARDY:—

Corroboration—Mode of proof—Conviction—Evidence Act, 1851 (14 & 15 *Vict. c.* 99), *s.* 13—*Bastardy Laws Amendment Act*, 1872 (35 & 36 *Vict. c.* 65), *s.* 4.—A summons under the Bastardy Laws Amendment Act, 1872, was taken out by the respondent against the appellant, alleging that he was the father of her illegitimate child. The magistrates made an order against the appellant for maintenance. The only evidence to corroborate the evidence of the respondent, as required by section 4 of the Act of 1872, was that of a police superintendent, who deposed that he was present when the appellant was indicted at the assizes for having had unlawful connection with the respondent, then under sixteen, and that he was convicted and sentenced to eighteen months' imprisonment.

Semble, that in bastardy proceedings the conviction of the appellant of having had carnal knowledge during the period in question is not sufficient corroboration to satisfy section 4, and the conviction must be proved by a certified copy under section 13 of the Evidence Act of 1851; it is insufficient for it to be proved by the evidence of a person who was present when it took place.

But held, that the conduct of the appellant during the proceedings was corroborative evidence.

Decision of Divisional Court (58 SOLICITORS' JOURNAL, 49; 1914, 1 K. B. 1) affirmed on the latter ground.—MARSH *v.* DARLEY, *C.A.*, 652; 1914, 1 K. B. 1.

BILL OF EXCHANGE:—

Cheque—Cheque obtained by duress in France—Liability of drawer.—The plaintiffs, hotel keepers in France, obtained from the defendant, a young Englishman of twenty-two years of age who had been staying in the hotel with a friend, who had lost heavily at the Casino, and whose cheques, cashed by the hotel company to pay his debts, had been dishonoured, a cheque payable in England by a threat of criminal proceedings in France if it were not given, and a suggestion that no such proceedings would be taken if the cheque were given.

In an action on the cheque in England, Scrutton, J., entered judgment on the claim for the defendant, and also for the defendant as to part of his counter-claim, but without costs.

Held, that there was evidence on which the judge could in his discretion deprive the defendant of costs.

Decision of Scrutton, J. (29 T. L. R 578), affirmed.—SOCIÉTY DES HÔTELS RÉUNIS *v.* HAWKER, *C.A.*, 515.

See also Banker.

BILL OF SALE:—

"Given in consideration of any sum under £30"—Bills of Sale Act, 1882 (45 & 46 *Vict. c.* 43), *s.* 12.—The consideration in a bill of sale was stated therein to be as follows:—"In consideration of the sum of £30 (less, however, the sum of £2 2s. retained thereout by the said mortgagees with the consent of the said mortgagor, and paid to the said mortgagees' solicitor towards the cost of, and incidental to, the preparation, execution, stamping, and registering of these presents), now paid to the said mortgagor by the said mortgagees (the receipt of which the said mortgagor hereby acknowledges)."

Held, that the bill of sale was not made or given in consideration of any sum under £30 within the meaning of section 12 of the Bills of Sale Act, 1882.—LONDON AND PROVINCIAL DISCOUNT CO. *v.* JONES, *K.B.D.*, 83; 1914, 1 K. B. 147.

BUILDING CONTRACT:—

1. *Limited time for work, with penalties for delay—Immediate possession of site—Access by one road only—Third party preventing access — Consequent delay — Rights of builder.* — A builder contracted with a building owner to build a school, and by the contract he was to be at liberty to enter on the premises for the purpose of executing the works immediately on the signing of the contract, and to deliver up the premises fit for use within ten months of the date of the contract, subject to penalties. Access to the site could only be obtained by one road. R. claimed a strip of land on the road, and, threatening the builder with an injunction, caused delay in commencing the work. R. had no right to do this. The builder sued the building owner for damages, alleging that there must in such a contract be an implied warranty against any interference with immediate access to the land, and recovered damages before the official referee.

Held, on appeal, that judgment must be entered for the defendants. By such a contract the building owner undertook that prompt possession and use of the site should be given so far only as concerned his own acts and ability; he did not ensure such possession and use.—PORTER *v.* TOTTENHAM URBAN DISTRICT COUNCIL, *K.B.D.*, 269; 1914, 1 K. B. 663.

2. *Sub-contractor or specialist—Supply of goods to the order of architect—User by builder with knowledge that goods were supplied by the seller—Right to sue builder.*—Specialists for the supply of door handles and door fittings ordered by architect held entitled to sue the builders, since, in the circumstances, the fact that the goods supplied had been used by the builders in the execution of their contract raised an implied promise by them to pay for the goods.

Semble, neither an architect's order nor certificate *per se* binds a builder, even if he uses the goods on the building, to pay for them, since an architect has no authority to pledge the contractor's credit as he has that of the building owner.—RAMSDEN & CARR *v.* CHESSUM & SONS, *H.L.*, 66.

BUILDING SOCIETY:—

Rules — Borrowing powers — Unlimited borrowing — Banking business—Ultra vires—*Winding up—Assets—Priorities—Depositors —Shareholders—Building Societies Act*, 1836 (6 & 7 *Will.* 4, *c.* 32), *s.* 1.—Held, varying order made by Court of Appeal, *sub. nom. Re Birkbeck Permanent Benefit Building Society* (1912, 2 Ch. 183, 106 L. T. 968)—the effect of which order was to postpone the claims of depositors until the shareholders were paid in full—that the carrying on of a banking business by the building society could not be justified under rule 35, and had rightly been decided as *ultra vires*. Although the depositors had noticed that this borrowing was *ultra vires*, and an individual depositor could recover, if under a tracing order he could prove that a particular asset represented the actual money he had lent the society, it was practically impossible for the depositor to do so; and as the shareholders were not entitled to apply the depositor's money to meeting liabilities, the case must be treated as one where the security had depreciated in value, and those who had paid money on the faith of the security must accept payment back in the liquidation so far as the security would go, and share the loss equally.

Per Lord Dunedin.—The order appealed from admittedly followed the order made by the Court of Appeal in the case of the *Guardian Permanent Building Society* (23 Ch. D. 440). He thought that its authority was somewhat scant, and there was no possibility of saying it had in any way received the approval of this House. —SINCLAIR *v.* BROUGHAM, *H.L.*, 302 ; 1914, A. C. 398.

BURIAL GROUND :—

1. *New burial ground—Parish formed by Order in Council—Church and churchyard attached to parish—Extension of churchyard—Permission of adjoining owner—Right to bury within 100 yards of houses—Injunction—Application of Burial Acts to extensions of churchyards—Burial Act*, 1855 (18 & 19 *Vict. c.* 128), *s.* 9—*Burial Act* 1852 (15 & 16 *Vict. c.* 85), *ss.* 2, 9, *and* 10 *to* 24—*Burial Act*, 1853 (16 & 17 *Vict. c.* 134), *ss.* 1 *and* 7—*Burial Act*, 1854 (17 & 18 *Vict. c.* 87), *s.* 12—*Statute Law Revision Act*, 1892 (55 & 56 *Vict. c.* 19).—1. At common law there is no right to prohibit burials near private residences, and the only rights given to individuals in this respect arise out of the law of nuisance ; but the various Burial Acts have given fresh rights of prohibition to individuals in certain cases. 2. Where the place of burial is within an area in which an Order in Council, made under the New Parishes Act, 1843, provides that no new burial ground shall be opened without the previous approval of the Local Government Board, an owner of buildings within 100 yards of such place of burial has (apart from the giving or withholding of the official consent) no separate individual right to object to, and prohibit the user, of the place of burial for burials without his consent in writing being first obtained 3. No individual right to object under section 9 of the Burials Act, 1855, to burial within a certain distance of a house exists for the owner of such house except in the cases of land appropriated and used as a burial ground under the Burial Acts themselves. 4. In the case of other burial places (not being cemeteries constructed by companies for profit, and coming within section 10 of the Cemetries Clauses Act, 1847), and more particularly in the case of churchyards and extensions of churchyards, the owner of adjacent buildings has no new and statutory rights given to him by the Burial Acts.

Greenwood v. *Wadsworth* (16 Eq. 288) dissented from.—CLEGG *v.* METCALFE, *Sargant, J.*, 516 ; 1914, 1 Ch. 808.

2. "*Sale under the authority of an Act of Parliament*"—*Sale by order of the Charity Commissioners—Disused Burial Ground Act*, 1884, *s.* 5—*Charitable Trusts Act*, 1853, *s.* 24—*Charitable Trusts Amendment, Act*, 1855 *s.* 29.—A sale by order of the Charity Commissioners is not a "sale under the authority of an Act of Parliament" within the meaning of section 5 of the Disused Burial Grounds Act, 1884.

Section 24 of the Charitable Trusts Act, 1853, only gives a power to the Charity Commissioners to decide finally whether a sale is beneficial to the charity or not. Trustees of charities have a power of sale independently of the Charitable Trusts Acts, though any sale in exercise thereof is liable to be set aside if proved not to be for the benefit of the charity.—RE HOWARD STREET CONGREGATIONAL CHAPEL, *Astbury, J.*, 68 ; 1913, 2 Ch. 690.

CANAL :—

Canal company—Canal bridge—Standard of repair by canal company—Alteration in character of ordinary traffic—Notice of insufficiency of bridge for weights beyond ordinary traffic —Local Act, 1791 (31 *Geo.* 3, *c. lcr.*), *s.* 61 — *Locomotive Act*, 1861 (24 & 25 *Vict. c.* 70), *ss.* 6, 7.—By a local Act, passed in 1791, the respondent canal company were empowered to make a canal, and it was provided that the company should not make the canal across any highway until they should, at their own expense, have made bridges over the canal "and all such . . . bridges . . . shall from time to time be supported, maintained and kept in sufficient repair" by the company.

Held, that the company were liable to keep the bridges at such a standard of repair as to make them sufficient for the present day traffic.

Decision of Phillimore, J., (reported 1913, 1 K. B. 422, 82 L. J. K. B. 187, 11 L. G. R. 157), reversed—ATTORNEY-GENERAL *v.* SHARPNESS NEW DOCKS, &c., *C.A.*, 285 ; 1914, 3 K. B. 1.

CHARITY :—

1. *Bequest to charitable institution—Change of address—Change of management—Validity—Scheme.*—A testatrix by her will made in 1908 bequeathed a legacy to St. Mary's Home for Women and Children, 15, W.-street, Chelsea, and by a codicil made in 1911 she reduced the legacy and in other respects confirmed her will. At the date of the will there was a St. Mary's Home at 15, W.-square, Chelsea, under the management of the P. Ladies' Association. In 1908 the C. Association was formed for similar work, and, an arrangement being made between the two societies as to the areas of their work, St. Mary's Home passed under the control of the C. Association, who carried it on on the same lines as before. In 1909 the lease of the premises expired, and the St. Mary's Home was removed to another house in the neighbourhood, and there carried on as before.

Held, that the bequest was not to any person or association, but was a good charitable bequest for the particular charitable work carried on at St. Mary's Home, the change of address being immaterial, having regard to the confirmation of the will by the codicil.—RE WEDGWOOD, *Joyce, J.*, 595.

2. *Charitable bequest—Construction—Proof—Ambiguity in designation of beneficiary.*—A Scotsman domiciled in Scotland made a will in Scotch form, and left several legacies to Scotch charities. He left a legacy of £500 to the National Society for the Prevention of Cruelty to Children.

The Scottish National Society for the Prevention of Cruelty to Children claimed the legacy. It appeared from intrinsic evidence admitted by the Second Division that on one occasion, at any rate, the work done by the respondent society was brought to his notice, and received his approval, as it took up a case of cruelty which occurred on his own estates. There was no evidence whether the testator was aware of the existence of the appellant society.

The Lord Ordinary (Lord Hunter), upon a consideration of the will and the facts admitted, held that the testator really intended to benefit the respondent society, and the Second Division (the Lord Justice-Clerk, Lord Salveson, and Lord Guthrie), after calling evidence as to the testator's knowledge of the existence of the English society, affirmed that decision.

Held, that the only question before the court was which of the rival societies, on the true construction of the will, was entitled to the legacy. The appellant society was accurately described by the name which the testator used as designating the recipient of the legacy, and, there being no ambiguity, the *onus* was upon the claimants to disprove the *prima facie* presumption that the appellants were the society which in fact the testator intended to benefit, and that this the respondents had failed to do.

Decision of Court of Session (1913, S.C. 412) reversed.—NATIONAL SOCIETY FOR THE PREVENTION OF CRUELTY TO CHILDREN *v.* SCOTTISH NATIONAL SOCIETY FOR THE PREVENTION OF CRUELTY TO CHILDREN, *H.L.*, 720.

3. *Charitable funds—Appointment of corporation as custodian trustee of—Validity of appointment—Interference with duties of official trustee of charitable trusts—Whether statutory disability of public trustee to accept certain trusts applies to corporations—Public Trustee Act*, 1906 (6 *Ed.* 7, *c.* 55), *s.* 2 (1) (4) (5) *and s.* 4 (1) *and* (3)—*Public Trustee Rules*, 1912, *r.* 30.—The prohibitions and restrictions imposed on the Public Trustee by section 2 of the Public Trustee Act, 1906, are not applicable to the bodies referred to in section 4 (3) of that Act.

The appointment of a body corporate to be custodian trustees does not, in the absence of special circumstances, interfere with the powers and duties of the official trustees of charitable trusts. —RE CHERRY'S TRUST, *Sargant, J.*, 48 ; 1914, 1 Ch. 83.

4. *Charitable gift—Perpetuity—Gift for workpeople's holiday—Gift for benefit of a club—Discretion as to application of legacy.*—A testator gave a legacy for the purpose of contributing to the holiday expenses of the workpeople employed in a certain mill. He also gave a legacy to a club, and "desired" that it should be utilized for such purposes as the committee of the club might determine.

Held, that the bequest to the holiday fund was not a good charitable gift, and was void as being a perpetuity.

Held, also, that the gift to the club was a valid gift for such purposes as the committee should determine.

Re Clarke (1901, 2 Ch. 110) applied.—RE DRUMMOND, *Eve, J.*, 472 ; 1914, 2 Ch. 90.

5. *Endowment—Foundation gift—No other assets—Whether maintained "wholly by voluntary contributions"—Jurisdiction of Charity Commissioners—Disregard of order of Commissioners—Contempt of court—Charitable Trusts Act*, 1853 (16 & 17 *Vict. c.* 139), *s.* 62.—A charity was founded in 1911 by a gift to trustees of certain real and personal property, as to the disposal of which they had an absolute discretion. The charity had no other income or assets of any kind.

Held, that, notwithstanding that the charity was supported wholly by the gift of the donor, it was not maintained wholly by voluntary contributions within the meaning of section 62 of the Charitable Trusts Act, 1853, so as to be exempt from the control of the Charity Commissioners.—RE RICHARD MURRAY CHARITY, *Joyce, J.*, 671.

6. *National school—Conveyance of site under School Sites Act*, 1841 (4 & 5 *Vict. c.* 38)—*Trust for education of the poor—*

School for promoting education in the principles of the Established Church—Failure of particular intention—Cy-pres *doctrine—Scheme.*—By a deed poll dated the 31st of December, 1867, a donor conveyed a site under the School Sites Act, 1841, to trustees to be used for a school, and directed that a school should be erected on the site, to be conducted in connection with the National Society as a Church of England school. This was done, and the trustees carried on a church school there for many years. Ultimately they were compelled to close the school for financial reasons.

The Court of Appeal had directed (Buckley, L.J., dissenting) that as, on the construction of the deed poll, the grantors had shewn a general underlying educational intention, coupled with a special mode of giving effect to this intention, and the special mode had failed, the *cy-pres* doctrine applied. A scheme was accordingly directed to be formulated which should give effect to the general educational intention, but should authorize the use of the school for undenominational education.

Their lordships (having adjourned the appeal after argnment, in view of a settlement), by consent, discharged the order of the Court of Appeal, and made an order in the terms of the agreement arrived at by the parties.—PRICE *v.* ATTORNEY-GENERAL, *H.L.*, 171; 1914, A. C. 20.

7. *Sale of land—Consent of Board of Education—Endowment—Subscriptions—Mixed charity—Charitable Trusts Act*, 1853 (16 & 17 *Vict. c.* 137) *s.* 62—*Charitable Trusts Amendment Act*, 1855 (18 & & 19 *Vict. c.* 134), *ss.* 29, 48—*Foundling Hospital Act*, 1885 (48 & 49 *Vict. c.* 6, *Private*), *ss.* 3, 4.—The Foundling Hospital was founded in 1739 under a Royal charter, which conferred power to sell its lands. In 1741 certain land in Bloomsbury was purchased for the charity, the purchase money being derived from donations and subscriptions. About 1744 certain lands in the City of London were presented to the charity. At the present day the income of the charity is about £27,000, of which over £26,500 is derived from the real estate owned by the charity, and the remainder from donations and benefactions, including annual subscriptions to the amount of about £11, the income from the land exceeding the total expenditure.

Held, that in these circumstances the charity was partly maintained by voluntary subscriptions, and therefore, upon the true construction of section 62 of the Charitable Trusts Act, 1853, was exempt from the provisions of that Act and from the provisions of section 29 of the Charitable Trusts Amendment Act, 1855, so that the charity could deal with and dispose of its real estate without the consent of the Board of Education.—ATTORNEY-GENERAL *v.* FOUNDLING HOSPITAL, *Joyce, J.*, 398; 1914, 2 Ch. 154.

CHURCH :—

Parish church—Suppression of the monasteries—Conventual church—Priory—Alienation of church lands to the King by statute—Trespass—Crown grant—27 *Henry* 8, *c.* 28—*Real Property Limitation Act*, 1833 (3 & 4 *Will.* 4, *c.* 27)—*Real Property Limitation Act*, 1874 (37 & 38 *Vict. c.* 57)—*Limitation Act*, 1623 (21 *Jac.* 1, *c.* 16).—The vicar and churchwardens of a building now used as a parish church failed in an action to restrain the adjoining owners of property around the church, who were the successors in title of the person to whom King Henry the Eighth had granted the land of a suppressed priory in 1543, and who claimed the land on which the ruins stood, from trespassing on such lands and from obstructing and interfering with the restoration of the ruins, because they failed to prove that their church was in fact a parish church.

Note.—This case was reported on a preliminary point as to the admissibility of an old book in evidence: see *Fowke* v. *Bevington* (58 SOLICITORS' JOURNAL, 379).—FOWKE v. BEVINGTON, *Astbury, J.*, 610.

COMPANY :—

1. *Allotment of shares—Statement filed in lieu of prospectus—Errors and omissions in statement—Validity of allotment—Companies (Consolidation) Act*, 1908 (8 *Ed.* 7, *c.* 69), *ss.* 82, 87.—When a statement has been filed in lieu of a prospectus by a company which does not issue a prospectus, under the Companies (Consolidation) Act, 1908, s. 82, substantially in the form and containing the particulars required by Schedule II. of the Act, the company is entitled to commence business, notwithstanding that the statement may contain such inaccuracies and omissions as to make it misleading.—RE BLAIR OPEN HEARTH FURNACE CO., *C.A.*, 172; 1914, 1 Ch. 390.

2. *Articles of association—Appointment of proxy—Appointment by corporation—Foreign company having no common seal—Validity of appointment.*—If the articles of association of a company provide that no objection shall be made to the validity of any vote except at the meeting or poll at which such vote shall be tendered, and if no objection is so made, an objection cannot subsequently be taken.

The production of the copy of a resolution appointing a representative to vote in accordance with section 68 of the Companies (Consolidation) Act, 1908 (8 Ed. 7, c. 69), is sufficient *prima facie* evidence of his right to vote.

Where the articles of association provided that the instrument appointing a proxy should be, if such appointer was a corporation under the common seal,

Held, that this article did not apply to a foreign corporation which had no common seal and was not by its law required to have one.—COLONIAL GOLD REEF *v.* FREE STATE RAND, *Sargant, J.*, 173; 1914, 1 Ch. 382.

3. *Contract to allot to vendor fully-paid shares on increase o capital—Validity—Joint Stock Companies Act*, 1856 (19 & 20 *Vict. c.* 47), *ss.* 5 *and* 61—*Companies Act*, 1862 (25 & 26 *Vict. c.* 89), *ss.* 8 *and* 38—*Companies (Consolidation) Act*, 1908 (8 *Ed.* 7, *c.* 69), *ss.* 3. *and* 123.—A contract by a newly formed company to allot to the vendor to the company or his nominees in fully-paid shares one-fifth of each increase of share capital in the company is not wholly invalid and bad altogether, but merely imposes an obligation on the company to allot such shares, if demanded, on the vendor paying for them. The company cannot be compelled on such a contract to allot such shares as fully-paid without consideration, and the vendor to the company must accordingly pay the nominal price of such share capital if he wishes to take it up.

Held, accordingly that the agreement was good in so far as it created an obligation to allot to the vendor or his nominees one-fifth of the increased capital from time to time, but bad so far as it purported to relieve the allottee from liability to pay up all or any part of the nominal amount of such share capital.—HONG KONG AND CHINA GAS CO. *v.* GLEN, *Sargant, J.*, 380; 1914, 1 Ch. 597.

4. *Debenture—Conditions—Unauthorized borrowing—Time and place for payment of principal—Default in payment of interest—Condition precedent—Pleading—R. S. C., ord.* 19, *r.* 14.—Where a condition in a debenture was that, if notice in writing was served requiring payment off, and default was made in payment of the principal and interest or of part thereof for three days, the principal moneys became immediately payable; and where there was another condition that the principal moneys secured by the debenture would be paid at Lloyds Bank, Strand,

Held, not a good objection that the money did not become due till demand had been made for payment at Lloyds Bank, Strand.

Where there was power to borrow up to £3,000, and each of three guarantors gave a cheque for £1,000, and received a debenture for £1,000, and the overdraft at the company's bankers was about £3,000, and the cheques were paid into the bank to discharge such overdraft,

Held, not a good objection that the issue of such debentures was *ultra vires* the powers of the company as exceeding the limit, because the cheques were clearly being given with the object of being applied in reduction of the overdraft.

Re Wrexham, Mold and Connah's Quay Railway Co. (1899, 1 Ch. 440) applied.

Quaere: Whether such objections should not in fact be pleaded under ord. 19, r. 14.—RE HARRIS CALCULATING MACHINE CO., *Astbury, J.*, 455; 1914, 1 Ch. 920.

5. *Debenture trust deed—Remuneration of trustees—Appointment of receiver—Priority—Continuance of remuneration.*—By a debenture trust deed it was provided that the trustees, upon the security becoming enforceable, should hold the premises upon trust for conversion, and should hold the moneys to arise upon trust to pay or retain the costs and expenses, including their own remuneration, and to pay the balance to the debenture stockholders, and it was provided that the trustees' remuneration should be paid during the continuance of the security.

Held, that the trustees were entitled to their remuneration in priority to the debenture stockholders, but that such remuneration did not continue after the appointment of a receiver.

Re Piccadilly Hotel (Limited) (1911, 2 Ch. 534) applied.—RE LOCKE & SMITH (LIMITED), *Eve J.*, 379; 1914, 1 Ch. 687.

6. *Debentures—Floating charge*—Pari passu—*Payment of interest to some debenture-holders down to a later date than others—Winding-up—Deficiency of assets—Distribution of available assets rateably—Claim by other holders to receive arrears of interest.*—A company issued a series of debentures, creating a floating charge on its property, to rank *pari passu* "without any preference or priority over one another." The business of the company becoming increasingly unprofitable, interest was paid for some years to certain debenture-holders only, the others refraining from pressing for it. Upon a winding-up the assets proved insufficient for repay-

ment in full, and the latter holders claimed to have their payments of interest equalized with the former before any further distribution.

Held, that the assets must be distributed rateably among all the debenture-holders, according to their claims for principal and interest due at the date of the master's certificate, and without any prior equalizing of interest.

Decision of Sargant, J., affirmed.—Re Midland Express (Limited), *C.A.*, 47; 1914, 1 Ch. 41.

7. *Debentures—Floating charge—Reservation of power to mortgage or deal with property—Subsequent floating charge—Priorities.*—A floating charge cannot be displaced by the creation of a subsequent floating charge in the absence of words in the first charge authorizing such a displacement.—Re Cope & Sons, *Sargant, J.*, 432; 1914, 1 Ch. 800.

8. *Debentures—Floating security—Winding up—Conditions on debentures—Rights of debenture-holders—Appointment of receiver.*—A limited company issued debentures to secure moneys which became payable at a certain date or sooner on the winding up of the company, provided the winding up was not for the purpose of reorganization, reconstruction, or amalgamation. The company being wound up for purposes of reconstruction, it was held that, notwithstanding the conditions attaching to the debentures, the debenture-holders were entitled to the appointment of a receiver.—Re Crompton & Co., *Warrington, J.*, 433; 1914, 1 Ch. 954.

9. *Debentures—Receiver and manager—Jeopardy.*—There is jeopardy, entitling to the appointment of a receiver, where, at a directors' meeting, the auditor's unchallenged statement was that, if the amount of the principal secured by the debentures could be realized after clearing off the company's liabilities, that was as much as could be hoped for; and where the evidence also went to shew that, just prior to the meeting, the plaintiff in this debenture-holders' action had been informed by one of the directors that the company's funds and credit were exhausted, but that the creditors were being held off temporarily by the personal credit of that director, and that the employees at one of the branches of the business had been, or were about to be, dismissed, and had heard *aliunde* that the premises of that branch had been put into agents' hands for the purpose of letting them.

Re Tilt Cove Copper Co. (Limited) (57 Solicitors' Journal, 773; 1913, 2 Ch. 588) and *Re Victoria Steamboats* (1897, 1 Ch. 158) followed.—Re Braunstein & Marjolaine, *Sargant, J.*, 755.

10. *Directors—Power of—Unwilling to act—Power of company at general meeting—Companies (Consolidation) Act*, 1908 (8 *Ed.* 7, c. 69), *Table A, Clause* 85.—A company had only two directors, one of whom was unwilling to act with the other. The power of appointing additional directors was with the directors, but the company, in general meeting, appointed additional directors.

Held, that since the directors were unwilling to exercise their powers, they became exercisable by the company in general meeting.—Barron *v.* Potter, *Warrington, J.*, 516; 1914, 1 Ch. 895.

11. *Directors—Remuneration—Conditions as to retirement—No annual general meeting—Retirement at ordinary meeting—Article as to retirement not complied with—Right to fees—Companies Act*, 1862 (25 & 26 *Vict.* c. 89), *s.* 49.—A director of a company does not necessarily step into an office which is perpetual unless terminated by some act, but into an office the holding of which is limited by the articles of association of the company. A resolution by directors not to accept fees can be rescinded when the fees again become payable.

Directors may still have functions to perform as such after an agreement has been entered into to sell the undertaking and assets of the company.

Where an article of association says that all the directors of the company must retire in a specified year, it is no answer to their not retiring that no general meeting was called, as it is their own fault when such meeting is not called.—Re Consolidated Nickel Mines (Limited), *Sargant, J.*, 556; 1914, 1 Ch. 883.

12. *"Member"—Articles of association—Reconstruction—Sale of assets to new company in consideration of partly paid shares—Personal representatives of deceased shareholders—Non-registration of—Rights of dissentient member—Executors of deceased members' right to dissent from resolutions within section* 192, *sub-section* (3), *of the Companies (Consolidation) Act*, 1908 (8 *Ed.* 7, c. 69).—Having regard to sub-sections 1, 2, and 3 of section 192, the word "member" in section 192 of the Companies (Consolidation) Act, 1908, includes the estate of a deceased member.

Where one of the articles of association of the company says, "a person entitled to share in consequence of the death or bankruptcy of a member shall not be entitled to receive notice of or to attend or vote at meetings of the company, or, save as aforesaid, to exercise any of the rights and privileges of a member unless and until he shall have elected to be and shall have been registered as the holder of the same," it does not thereby preclude executors from acting on behalf of the estate they represent before being registered, but only where they act as their own behalf.—Llewellyn *v.* Kasintoc Rubber Estates (Limited), *Astbury, J.*, 686.

13. *Petition—Winding-up—Company's name, slight error in spelling—Impossibility of misleading the public—Amendment—Re-advertisement dispensed with—Practice.*—Although it is an old-standing rule that an error in the name of a company in the winding-up advertisement renders the advertisement absolutely void, and although it is desirable that in almost every case this old-standing rule should be adhered to, there are cases where the mistake is of such a very trifling character that no one could possibly be misled by it, and in such a case the court can exercise the discretion of waiving the formal defect under rule 217.—Re L'Industrie Verriere, *Astbury, J.*, 611.

14. *Promoters—Consideration for contract—Benefit of lease agreed to be granted—No binding agreement at time of sale—Lease afterwards granted—Claim by company to be refunded promoters' profits.*—Promoters of a company entered into a contract with the company to sell and transfer to them in consideration of £1,500, *inter alia*, "the benefit of the lease agreed to be granted" of certain premises. At the date of the contract there was no enforceable agreement for a lease, but the intended lease then being negotiated for was afterwards granted, and assigned to the company.

Held (affirming Sargant, J.), that the whole £1,500 was profit belonging to the promoters, and being fully disclosed by them they were not liable to return to the company so much thereof as was attributable to the value of the lease, although no lease was "agreed to be granted" at the date of the contract.—Omnium Electric Palaces (Limited) *v.* Baines, *C.A.*, 218; 1914, 1 Ch. 332.

15. *Prospectus—Action for rescission of contract by applicant for shares—Misrepresentation.*—Where statements are made in a prospectus inviting the public to subscribe for shares which are in fact untrue, but which are based on a report, a subscriber will be entitled to rescission of his contract with the company to take shares, even though the prospectus contains beneath such statements a paragraph that the above statements are based on the report, a certified translation of which can be inspected by intending applicants for shares. It is incumbent on the directors to go further, and warn the public that they do not vouch for the truth of the report.—Re Pacaya Rubber and Produce Co. (Limited), *Astbury, J.*, 269; 1914, 1 Ch. 542.

16. *Receiver—Debenture holders action—Floating charge—Sale of assets—Liability of receiver to pay rent—Beneficial ownership.*—There is no privity of estate or obligation between the debenture-holders or a receiver of a company and the landlord whose premises have been let to such company, and are included in a floating charge of the assets of the company to such debenture-holders, and accordingly such landlord cannot claim payment of rent in respect of occupation out of the proceeds of the company's goods sold by the receiver while in such occupation.

The principle as to mortgages by sub-demise laid down in *Hand* v. *Blow* (1901, 2 Ch. 721) applied to mortgages by way of floating charge.—Re Abbott & Co., *Sargant, J.*, 30.

17. *Reduction of capital—Shares forfeited after part payment—Form of minute—Practice—Power to treat forfeited shares as unissued and as if nothing had been paid thereon.*—It was provided by one of the articles of association of a company that every share which should be forfeited should thereupon become the property of the company, and the directors might sell, re-allot or otherwise dispose of the same upon such terms and in such manner as they should think fit. On a petition for reduction of capital,

Held, that the forfeited shares could be treated as unissued and with nothing paid thereon, although the sum of £82 7s. 6d. had in fact been paid in respect of them.

The principle of *Re Oceana Development Co. (Limited)* (1912, 56 Solicitors' Journal, 537), applied.—Re Victoria Rubber Estates, *Astbury, J.*, 706.

18. *Scheme of arrangement—Increase of share capital—No modification of memorandum of association—"Consolidation or division of shares"—Companies (Consolidation) Act*, 1908 (8 *Ed.* 7, c. 69), *ss.* 45 *and* 120.—A company with a capital divided into preferred, ordinary, and deferred shares proposed to increase its capital by an issue of ordinary shares, to rank *pari passu* with the existing ordinary shares. The scheme was sanctioned under section 120 of the Companies (Consolidation) Act, 1908, but not by a majority sufficient to satisfy section 45.

Held (reversing Astbury, J.), that the proposed scheme ought to be sanctioned, as not involving any modification of the company's memorandum of association. Section 45 of the Act is limited to the two cases of reorganisation by consolidation and division of shares of different classes.

Re Palace Hotel (Limited) (1912, 2 Ch. 438) followed.

Re Docehan Gloves (Limited) (1913, 1 Ch. 226) overruled.—RE SCHWEPPES, *C.A.*, 185; 1914, 1 Ch. 322.

19. *Scheme of arrangement—Reconstruction—Sale for shares in the new company—Dissentient members—Jurisdiction—Arrangement section—Companies (Consolidation) Act*, 1908 (8 *Ed.* 7, *c.* 69), *s.* 120 *and* 192.—Where provision is made in a scheme of arrangement for dissentient creditors, and the company or the liquidator undertake to pay all the non-assenting creditors in full before parting with the assets of the company, a sale of the entire assets of the company for shares in a new company is not beyond the scope of section 120 of the Companies (Consolidation) Act, 1908 (8 Ed. 7, c. 69), and will be sanctioned.

Re General Motor Cab Co. (1913, 1 Ch. 377) distinguished and explained.—RE SANDWELL PARK COLLIERY, *Astbury, J.*, 432; 1914, 1 Ch. 589.

20. *Shares—Certificates—Pledge of—Blank transfer—Estoppel.*—*Semble*, the principle laid down in *Colonial Bank* v. *Cady* (15 A. C. 267), that anyone who signs a certificate for shares in blank, and hands it to another person, knows that third parties will think that such person had authority to deal with it, extends to a person who, without having had the certificate in his possession, leaves it in the hands of his broker, and therefore such person is estopped from denying the title of third parties to the security represented by such certificate.

Ultra vires, and an order for compulsory winding-up was accordingly made.—FULLER *v.* GLYN, MILLS, CURRIE, & Co., *K.B.D.*, 235; 1914, 2 K. B. 168.

21. *Shares—Payment in advance of calls—Repayment to shareholders—Loans—No power in company to repay.*—A company was authorized by its articles of association to receive from any member willing to advance the same all or part of the moneys due upon his shares beyond the sums called for, and to pay interest thereon. The company issued ordinary shares on several occasions, on each issue the shareholders being given the option of paying the balance due on their respective shares in anticipation of calls, such balance to bear interest at 4 per cent. Some of the shareholders exercised this option.

Held, that the moneys so paid in advance of calls were not to be regarded as a loan to the company, and could not be repaid to the shareholders by the company.—LONDON AND NORTHERN STEAMSHIP Co. *v.* FARMER, *Joyce, J.*, 594.

22. *Shares—Preference shares—Distribution of profits—Priority—Ordinary shares—Rights of shareholders* inter se.—A company, which had power under its articles to issue new shares upon such terms including preference as the company might direct, passed a resolution that the capital of the company be increased by the issue of certain new shares to be called preference shares, and the holders thereof to be entitled to cumulative preferential dividends at the rate of 10 per cent. per annum on the amount for the time being paid up on such shares, and that such preference shares should rank, both as regards capital and dividend, in priority to the other shares. Preference shares were issued in accordance with this resolution. The articles further provided that, subject to any priorities that might be given upon the issue of any new shares, the profits of the company available for distribution should be distributed as dividends among the members in accordance with the amounts paid on the shares held by them respectively.

Held that, in the distribution of profits, holders of the preference shares were not entitled to anything more than a 10 per cent. dividend, since, where preference shares are allocated with a fixed dividend, the right of the holders of such shares to take any further dividend is impliedly negatived.

Decision of Court of Appeal (56 SOLICITORS' JOURNAL, 646; 1912, 2 Ch. 571, 81 L. J. Ch. 718) affirmed.—WILL *v.* UNITED LANKAT PLANTATIONS Co., *H.L.*, 29; 1914, A. C. 11.

23. *Winding up—Debentures—Pledge—Validity—Constructive delivery—Warrant—Bill of sale—Registration—Practice—Appeal by liquidator without leave—Competency—Companies Act*, 1900 (63 & 64 *Vict. c.* 48), *s.* 14—*Bills of Sale (Ireland) Act*, 1879 (42 & 43 *Vict. c.* 50), *s.* 4—*Companies (Consolidation) Act*, 1908 (8 *Ed.* 7, *c.* 69), *s.* 151.—The respondent, Doherty, advanced money to the appellant company on the security of manufactured whiskey lying in the company's bonded warehouses. On each advance his name was entered in the company's stock book opposite the particular whiskey intended to be pledged, and a delivery warrant and invoice was sent him. He also advanced money to the company on the security of second debentures, issued to him in 1903, which were not registered, but which were secured by a debenture trust deed of 1895. On the hearing of the appeal by the company, which was in liquidation, and its liquidator, the objection was taken that the liquidator had not obtained leave to appeal.

Held, (1) that leave to appeal was not essential to the competency of appeal; (2) that under the agreement to pledgee between the respondent and the company the various transactions amounted to mortgages of the whiskey, and not pledges, since there was no constructive delivery of possession of the whiskey to him, and that the warrants required registration under the Companies Act, 1900; and (3) that the respondent was entitled to a valid lien on the debentures in so far as they affected property comprised in the trust deed.

Decision of Court of Appeal (1912, I. R. Ch. 349) varied.—DUBLIN CITY DISTILLERY (LIMITED) *v.* DOHERTY, *H.L.*, 413.

24. *Winding-up—Examination in open court—Jurisdiction—Discretion—Companies Act*, 1908, *s.* 174—*Companies (Winding-up) Rules*, 1909, *r.* 5 (2).—According to the practice examinations under section 174 of the Companies Consolidation Act, 1908, are private examinations and the practice should be adhered to.

Quære, whether there is jurisdiction to order such examinations to take place in open court in very exceptional circumstances.

Re London and Northern Bank, Haddock's case (1902, 2 Ch. 76) and *Re John Tweddle & Co.* (1910, 2 K. B. 697), applied.—RE PROPERTY INSURANCE Co., *Astbury, J.*, 472; 1914, 1 Ch. 775.

25.—*Winding up—Scheme of arrangement—Guarantee policy—Contract therein to pay the amount of principal and interest due on mortgage on default of mortgagor—Re-insurance—Liability of re insuring company.*—In 1900 a guarantee society guaranteed the debentures of a company, and contracted with an insurance company for a re-insurance "to the extent of £5,000, being two elevenths of the risk insured." The business of the company was unsuccessful, and in September, 1909, the guarantee society entered into possession of its property and assets. In December, 1909, the guarantee society went into voluntary liquidation, which subsequently was continued under the supervision of the court. A scheme of arrangement was sanctioned, and by it the insurance company agreed to be bound, with the result that they were not to be liable to pay their proportion of any claims in respect of risks re-insured until the guarantee society had made a payment under the scheme. In 1910 the guarantee society realised the assets of the business, and as their was a deficiency for which the debenture holders proved in the liquidation of the guarantee society, the liquidator of the guarantee society made a claim for this deficiency on the insurance company.

Held, that whether the contract of re-insurance was to be regarded as one of guarantee or indemnity, the liquidator's claim must succeed, and the re-insuring company must pay the full amount. Accordingly the order of Neville, J., appealed from was discharged, and a declaration made that the re-insuring company was liable to the liquidator to the extent of two-elevenths of the deficiency remaining after applying the proceeds of the mortgage property towards the payment of the debenture debts.

Decision of Neville, J. (1913, 2 Ch. 604), reversed.—RE LAW GUARANTEE TRUST AND ACCIDENT SOCIETY, *C.A.*, 704; 1913, 2 Ch. 604.

See also Assurance Company, Auditors, Attachment, Costs, Revenue.

COMPULSORY PURCHASE :—

Street widening—Chapel—Destruction of access—Interference with main structure of building—Injunction—Land Clauses Act, 1845 (8 & 9 *Vict. c.* 18)—*London County Council (Tramways and Improvements) Act*, 1913 (2 & 3 *Geo.* 5, *c. cvi.*), *s.* 18.—A corporation was empowered by statute to acquire the premises scheduled therein, provided that the corporation should not be entitled to take or interfere with the main structure of any house, building or manufactory. The corporation proposed to acquire the forecourt of a chapel, so that the means of access thereto would be practically destroyed, unless extensive structural alterations were carried out.

Held, that that amounted to "interference with the main structure" of the chapel within the meaning of the proviso, and that the corporation should be restrained by injunction from proceeding to acquire the premises.—GENDERS *v.* LONDON COUNTY COUNCIL, *Joyce, J.*, 706.

See also Lands Clauses Act.

CONTEMPT OF COURT :—

Committal—Notice of motion—How intituled—Incomplete title—Name of stranger—Amendment—R.S.C., 1883, *ord.* 28, *r.* 12.—It is not necessary in the heading of a notice of motion to commit a solicitor and his clerk for contempt of court in interfering with the administration of justice at the hearing of certain proceedings before a taxing-master to head the motion in the matter of the clerk as well as in the matter of the taxation.

The case of *O'Shea* v. *O'Shea and Parnell* (1890, 15 P. D. 59) is not an authority for the contrary proposition.

Semble, that the court could give immediate leave to amend the notice if necessary by adding the name of the clerk to the title under ord. 28, r. 12.—RE LAW (A SOLICITOR), *Sargant, J.*, 656.

CONTRACT :—

1. *Carriage by rail—Portion of consignment—Non-delivery of—Liability of railway company.*—The plaintiff entered into a contract with the defendants to carry three consignments of carcases. The contract provided, *inter alia*, that the company should not be exempted from liability in case of non-delivery of any consignment, except where they proved that it was not caused by negligence or misconduct. In an action by the plaintiff it was proved that an appreciable portion of each consignment was not delivered, and the defendants failed to disprove negligence or misconduct.

Held, that the plaintiff was entitled to recover, as there was no delivery of a consignment if an appreciable part of it was not delivered.—WILLS *v.* GREAT WESTERN RAILWAY, *K.B.D.*, 140; 1914, 1 K. B. 263.

2. *Seat in theatre—Forcible removal of visitor—Right to damages.*—The plaintiff paid for admission to a kinema theatre, but soon after he was seated he was asked to leave by one of the attendants, on instructions from the manager. The plaintiff refused either to leave or to get out of his seat and speak with the manager, who, on being informed of this, ordered his removal. In an action for damages for assault the jury found for the plaintiff.

Held (Phillimore, L.J., dissenting), affirming the decision of Channell, J., that the plaintiff was entitled to damages.—HURST *v.* PICTURE THEATRES (LIMITED), *C.A.*, 739.

3. *Trading corporation—Monopoly—Reasonableness of restrictions—Evidence—Illegality not pleaded—Duty of the court—Measure of damages.*—By a contract in writing, the plaintiffs agreed to buy from the defendants 72,000 tons of salt to be manufactured by the defendants and delivered to them in about equal monthly quantities over a period of four years from the 1st of January, 1908, to the 31st of December, 1911. It was a term of the contract that the defendants should not manufacture salt beyond the amount agreed to be delivered to the plaintiffs and a certain yearly quantity which had to be delivered under an existing contract to a third party, and such further quantity as the defendants, who were a chemical manufacturing company, might require for such purposes, but not for sale as salt. The plaintiffs alleged breaches of this contract by the defendants and claimed damages. At the trial, the point was first taken by the defendants that the contract, being in restraint of trade, was unenforceable. Scrutton, J., refused to admit this plea, and gave judgment for the plaintiffs, the damages to be assessed. The Court of Appeal (Kennedy, L.J., dissenting) held that the contract was void, and therefore the question of damages did not arise for their consideration. The plaintiffs appealed.

Held, that the contract created a monopoly not more in restraint of trade than was reasonably necessary for the protection of the plaintiffs, and the case was remitted to the Court of Appeal to deal with the damages.

Decision of Court of Appeal (1912, 107 L. T. 489) reversed.

In order to raise the question of illegality of the contract it is not necessary that the defence of illegality should be pleaded, for the court is bound to deal with illegality of its own motion. NORTH-WESTERN SALT CO. *v.* ELECTROLYTIC ALKALI CO., *H.L.*, 338; 1914, A. C. 461.

See also Building Contract, Infant, Sale of Goods, Statute of Frauds.

COPYRIGHT :—

1. *Card-index system—"Literary work"—Copyright Act*, 1911 (1 & 2 *Geo.* 5, *c.* 46), *ss.* 1, 35.—A firm devised and sold a card-index system suitable for use for a particular purpose. The cards bore only such words as "name," "address," and did not bear any particular arrangement of words.

Held, that the card-index system was not a literary work within the meaning of section 35 of the Copyright Act, 1911, and therefore could not be the subject of copyright.—LIBRACO (LIMITED) *v.* SHAW WALKER (LIMITED), *Warrington, J.*, 48.

2. *Infringement—No registration—Effect of the Copyright Act*, 1911 (1 & 2 *Geo.* 5, c. 46), *in curing lack of registration—Assignment—Title of assignee to sue—Memorandum in writing—Parol evidence—Identity of the subject matter—Agreement in writing "at or before" sale—Receipt for purchase moneys—Part of one transaction—Copies with a newsagent on sale or return—Sale after notice of plaintiff's claim—Duty to recall—Defendant's offer before action brought—Plaintiff's right to an order—Costs—Copyright Act*, 1862 (25 & 26 *Vict.* c. 68), *ss.* 1, 3 *and* 4—*Copyright Act*, 1911 (1 & 2 *Geo.* 5, *c.* 46), *ss.* 8 *and* 24.—1. Although without registration title to sue for infringement under the Copyright Act, 1862 (25 & 26 Vict. c. 68), is not complete, yet section 4 of the Copyright Act, 1911 (1 & 2 Geo. 5, c. 46), substitutes copyright under that Act for copyright under the old Act, and cures thereby the defect of want of registration, registration being no longer necessary, nor, in fact, possible.

2. Where the description of the goods in the receipt for the purchase money of an article the subject of copyright pointed to definite subject matter in the contemplation of the parties, by describing the goods as "five original card designs inclusive of all copyright (subjects, four golfing subjects, one teddy-bear painting)," held that parol evidence was admissible to prove that the drawing infringed was, in fact, one of the four golfing subjects.

3. Held, also, that the above-mentioned receipt was the last of the steps in a single transaction, namely, the assignment of the copyright; and that it was accordingly made "at the time of the sale or disposition" within the meaning of section 1 of the Copyright Act, 1862.

4. Where copies had been left in the possession of a newsagent on sale or return, the property in such copies remained in the person so leaving them; and in this case the defendant company, not having recalled such copies when notified of the plaintiff company's copyright, a subsequent sale of them constituted an infringement by the defendant company of the plaintiff company's copyright, and the plaintiff company was entitled to damages for such infringement, notwithstanding section 8 of the Copyright Act, 1911.

5. A person enforcing a legal right is not obliged to accept an offer before action, but is entitled to insist on having his right protected by an order of the court.—SAVORY *v.* WORLD OF GOLF, *Neville, J.*, 707.

3. *Literary work—Song—Publication abroad—What amounts to publication—When first published—Issue of copies to the public—Colourable imitation—Infringement—Injunction—Copyright Act*, 1911 (1 & 2 *Geo.* 5, *c.* 46), *s.* 1, *sub-section* 3; *s.* 2 *and s.* 35, *sub-section* 3.—Twelve copies of a song composed by an American who assigned his copyright in it to a firm in New York were sent by the said firm to the plaintiffs in England with instructions to copyright the song in the United Kingdom on a particular day, namely, the 5th day of May, 1913, the same day on which the song was being published simultaneously in New York and in Canada, and the plaintiffs forthwith sent one copy to the British Museum and filed one in their office, and sent four others to the agent for the University Libraries, and exposed the remaining six for sale in their retail department.

Held, that the song had been published in the United Kingdom on the 5th of May, 1913, and there was an issue of the work to the public on that date within the meaning of section 1, sub-section 3, and section 35, sub-section 3, of the Copyright Act, 1911 (1 & 2 Geo. 5, c. 46).—FRANCIS, DAY & HUNTER *v.* FELDMAN & CO. *Neville, J.*, 654.

4. *Music—Gramophone records—Royalties — Board of Trade Regulations for Collecting Royalties—Copyright Act*, 1911 (1 & 2 *Geo.* 5, *c.* 46), *s.* 19 (6).—Regulations made by the Board of Trade as to the payment of royalties on gramophone records by means of adhesive stamps affixed to the records are within the scope of the Board's authority, and royalties must be paid in accordance with those regulations on any records made of copyright music after the coming into operation of the Copyright Act, 1911. The defendant had made and sold records of a musical composition before the 1st of July, 1911, the date when the Copyright Act, 1911, came into force. In an action to recover royalties, the plaintiff's case was that, although the defendants were entitled to make such records and sell them free from royalties up to the 1st of July, 1912, they were liable to pay for all sold since that date. The Board of Trade at that time had issued no regulations as to the mode in which royalties were to be paid.

Held, that Phillimore, J. (29 T. L. R. 174), was right in deciding that the defendants were bound to pay royalties on the records, although the records were manufactured abroad prior to the 1st of July, 1912, and therefore could legally be sold here; but (reversing Phillimore, J., on this point) that such royalties must be paid for in accordance with the regulations which had been since made by the Board of Trade as to the mode in which such royalties were payable.—MONCKTON *v.* PATHE FRERES PATHEPHONE, *C.A.*, 172; 1914, 1 K. B. 395.

5. *Translation — Advertisement — Ownership of copyright—Mistake—Copyright Act*, 1911 (1 & 2 *Geo.* 5, *c.* 45), *ss.* 1, 5, 8.—A message delivered by the Governor of Bahia in Portuguese to the Legislative Assembly was translated and condensed by the plaintiff, and appeared as an advertisement in an English newspaper by the authority of the Bahian Government. The defendants reproduced the plaintiff's translation in another newspaper as an advertisement, also with the authority of the Bahian Government. In an action by the plaintiff for infringement of copyright,

Held, that the plaintiff's translation was an original literary work, and that he was owner of the copyright.

Held, also, that section 8 of the Copyright Act, 1911, is no protection to a person who, knowing or suspecting that a copyright exists, makes a mistake as to the owner of a copyright, and under that mistake obtains authority to publish from a person who is not in fact the owner.—BYRNE *v.* STATIST Co., *K.B.D.*, 340; 1914, 1 K. B. 622.

CORPORATION :—

Herbage rights of freeman on the town moor—Depasturing cattle thereon—Stint tickets—Transfer of tickets to non freeman—Restricted transfer allowed by statute—"Fair"—Temperance festival—Roundabouts and shows—Damage to herbage by steam engines bringing roundabouts—Authority of the corporation to let—Consent of the freemen—Injunction—Measure of damage—Town Moor Act, 1774 (14 *Geo.* 3, *c. cv.*), *ss.* 1, 7, 8 *and* 10—*Newcastle-upon-Tyne Improvement Act*, 1870 (33 & 34 *Vict. c. cxx.*), *ss.* 6, 8, 11–19.—By an Act of 1774 certain herbage rights were established over the town moor of Newcastle-upon-Tyne, one portion of the moor being set apart for the Cowhill Fair, and another for the Newcastle races. By an Act of 1870 a committee of the freemen and the corporation were empowered to make agreements for the appropriation of parts of the moor for agricultural shows, reviews, &c. In 1882 the Newcastle races were transferred elsewhere, and the corporation and the committee of freemen jointly gave a licence for the holding of a temperance festival on the race ground, which had since been held annually, and had grown very much. In 1912 the surface of the moor was much cut up by heavy traction engines used to bring the roundabouts of the showmen to the festival, and the herbage was much injured, and consequently, in 1913, the committee of freemen, while concurring in granting permission for the festival, refused to concur in granting a licence to the defendants to attend with their roundabouts. The corporation, however, granted the defendants a licence, and they attended with their roundabouts. The plaintiffs accordingly brought this action for an injunction and damages.

Held, (1) that the temperance festival was not a "fair" within the meaning of the Acts of 1774 and 1870; (2) that the corporation could not, on the construction of the Acts, grant the defendants a licence without the consent of the plaintiffs; (3) that the defendants were trespassers, and that the plaintiffs were entitled to an injunction and damages commensurate with the injury done to the herbage; (4) that the grazing of cattle belonging not to freemen, but to transferees of stint tickets from freemen, was not sanctioned, as it was the duty of the committee of freemen to preserve the herbage.—WALKER *v.* MURPHY, *Neville, J.*, 672.

COSTS :—

1. *Taxation—Party and party costs—Expenses of plaintiff as witness—Evidence of expenses required by taxing master.*—On the taxation of party and party costs, taxing masters have made a practice that, before including in the *allocatur* allowances made to a witness for expenses, &c., the solicitor moving for taxation should produce either a voucher acknowledging the receipt by the witness or a letter from the witness satisfying the master that he had knowledge of the amount which it was proposed to allow him.

Held, by Buckley and Kennedy, L.JJ., that the rule was not open to any objection; but that a summons taken out to shew cause why the decision of the taxing master, disallowing the objections of the witness (who was the plaintiff in the action) should not be set aside and the items in respect of which objections had been carried in should not be allowed, was wrong in point of form, there being no concluded taxation which could be made the subject of review. They, however, in the circumstances, dealt with the matter, and, expressing the opinion that Scrutton, J., was wrong in dismissing the summons on the ground that he declined to interfere with the rule on which the taxing master had acted, dismissed the summons.

Vaughan Williams, L.J. (*dissentiente*), was of opinion that the taxing masters had no jurisdiction to make such a rule, as it cast an uncalled-for slur on solicitors as a profession, and that the plaintiff's objection that he could not give a receipt for what had not actually been paid him was well founded.—HARBEN *v.* GORDON, *C.A.*, 140; 1914, 2 K. B. 577.

2. *Taxation—Winding-up—Costs incurred before liquidation—Jurisdiction of winding-up court.*—Upon the application of the official receiver as liquidator in a compulsory winding-up, the court sitting in winding-up can order taxation of the solicitor's bill of costs against the company for a period before the commencement of the winding-up.—RE PALACE RESTAURANTS, *C.A.*, 268; 1914, 1 Ch. 492.

3. *Two defendants appearing by the same solicitor—Separate defences—Separate leading counsel—Taxation—Discretion of the taxing master—Rules of the Supreme Court, ord.* 65, *r.* 27 (8).—Ord. 65, r. 27 (8), does not preclude the judge, on a summons to review taxation, from interfering with the discretion of the taxing master on the question of allowing the costs of separate defences and separate counsel where two defendants appeared at the trial by the same solicitors.

Agar v. *Blacklock & Co.* (1887, 56 L. T. 890) followed.

Beattie v. *Lord Ebury* (1873, W. N. 194) not followed.—SPALDING *v.* GAMAGE, *Sargant, J.*, 722.

4. *Two defendants—Plaintiff successful against one defendant—Costs payable to successful defendant recoverable from unsuccessful defendant—R. S. C., ord.* 16, *r.* 4.—A plaintiff, in respect of personal injuries he received, owing to a collision between a motor cab and an omnibus, issued a writ against both companies. He obtained a verdict against the first defendants, but not against the second defendants, and judgment was entered against the first defendants with costs, and for the second defendants with costs.

Held, that the plaintiff was entitled to recover from the first defendants the costs he was liable to pay the second defendants, notwithstanding that before the issue of the writ against the two companies the cab company, although disclaiming liability, had done nothing to throw the blame on the omnibus company.

Decision of Coleridge, J. (29 T. L. R. 324), affirmed.

Bullock v. *London General Omnibus Co.* (1907, 1 K. B. 264) discussed.—BESTERMANN *v.* BRITISH MOTOR CAB Co., *C.A.*, 319; 1914, 3 K. B. 181.

See also Practice, Solicitor.

COUNTY COURT :—

1. *Action in High Court remitted—Judge's refusal to hear—Order to hear—Costs—County Courts Act*, 1888 (51 & 52 *Vict. c.* 43), *s.* 65.—A Divisional Court made absolute with costs a rule *nisi* calling upon the judge of the Manchester County Court to hear an action remitted to him for trial under an order of a master of the Supreme Court pursuant to section 65 of the County Courts Act, 1888. The action was one which could not have been commenced in the county court, and the judge refused to try it on the ground that his court was congested with local cases, and that it ought to have been remitted to Liverpool.

The Court of Appeal affirmed the order of the Divisional Court (30 T. L. R. 22), except so far as it imposed on the judge the costs thrown away in the county court.

Semble, the proper course for the judge to have taken would have been to appeal against the order remitting the case to his court.—REX *v.* MELLOR, *C.A.*, 361; 1914, 2 K. B. 588.

2. *Appeal—Practice and procedure—Arbitration under Agricultural Holdings Act*, 1908—*Award—Application to county court to set aside award—Right of appeal to Divisional Court—Rejection by arbitrator of evidence on issue—"Misconduct"—Agricultural*

Holdings Act, 1908 (8 *Ed.* 7, *c.* 28), *ss.* 13, 30, 43, *and Schedule II.*—An appeal lies to the Divisional Court on a point of law under section 120 of the County Courts Act, 1888, from the decision of a county court judge on an application to him to set aside the award of an arbitrator, on an arbitration under the Agricultural Holdings Act, 1908, on the ground of "misconduct" on the part of the arbitrator. For in such a case the county court judge is exercising his ordinary jurisdiction, and not a limited jurisdiction, created by the statute, from which there is no appeal to the Divisional Court.

If an arbitrator excludes evidence tendered on a material issue in the arbitration, that may be "misconduct," and a ground for the county court judge setting aside the award.—WILLIAMS *v.* WALLIS, *K.B.D.*, 536; 1914, 2 K. B. 478.

3. *Costs—Remitted action—Payment by defendant to plaintiff after action brought—Defendant ignorant of writ, when payment made—Sum "recovered in the action"—County Courts Act*, 1888 (51 *& 52 Vict. c.* 43), *s.* 116.—The day after a writ had been issued in an action of contract for £77 5s. 2d., the defendant, who was ignorant of the issue of the writ, paid the plaintiffs £72 10s., the amount for which he considered he was liable. Subsequently the writ was served and the action was remitted to the City of London Court, where the plaintiffs obtained judgment for £4 15s. 2d., the balance of their claim. The costs were taxed on scale C.

Held, following *Pearce* v. *Bolton* (1902, 2 K. B. 111), that the taxation was right, as the sum recovered in the action within the meaning of section 116 of the County Courts Act, 1888, was £77 5s. 2d.—LAMB BROS. *v.* KEEPING, *K.B.D.*, 596.

4. *Practice and procedure—Appeal by next friend of infant—Security for costs.*—An infant plaintiff by her next friend brought an action in the county court under the Employers' Liability Act, 1880, when judgment was given for the defendants. The plaintiff by her next friend gave notice of appeal, and the defendants applied to the Divisional Court for an order for security of costs, giving evidence on affidavit that the next friend would be unable, if unsuccessful, to pay defendants' costs. Counsel for the plaintiff contended that the court should look into the merits, and, if they thought there were reasonable grounds for the appeal, should not order security.

The court, following *Swain* v. *Follows & Bate* (*Limited*) (18 Q. B. D. 585), without examining into the merits, made an order for security of costs.—WILCOX *v.* WILLIS CROWN CORK AND SYPHON CO., *K.B.D.*, 381.

5. *Practice and procedure—Judge's ruling that there is evidence at trial—Application for new trial on ground that there is no evidence—Appeal to Divisional Court.*—A judge refused an application by the defendants for a new trial which was based on the ground that there was no evidence of misfeasance on the part of the defendants. The defendants appealed, and at the hearing the plaintiff took the preliminary point that the Divisional Court had no jurisdiction to entertain the appeal on this ground.

Held, that the preliminary objection to the jurisdiction failed, and that an appeal lay to the Divisional Court under section 120 of the County Courts Act, 1888. But

Held, also, that the county court judge, having ruled there was evidence at the trial, could not hold that there was no such evidence on the application for a new trial, as in that event he would be reversing his own decision on a point of law. The judge, therefore, was right in refusing to order a new trial upon this ground.—CLARKE *v.* WEST HAM CORPORATION, *K.B.D.*, 496; 1914, 2 K. B. 448.

COVENANT:—

1. *Restrictive covenant—Benefit—Covenant running with the land—Negative easement—Covenant enforceable in equity.*—Purchasers of land sold in plots for building in 1880 entered into restrictive covenants with the tenant for life of a settled estate who had the legal estate therein, and the trustees who had only a power of sale. There was no general building scheme, but similar covenants were entered into by purchasers of property in the same road.

Held, that the benefit of the covenant ran with the land in equity in the same manner as a negative easement, and that an adjoining owner was entitled to enforce the covenant against a purchaser and his tenant although the original legal estate of the covenanter had ceased to exist.—LONG *v.* GRAY, *C.A.*, 46.

2. *Restrictive covenant—Vendor and purchaser—Title—Contract for sale of land containing restrictive stipulation—Covenant for protection of vendor's adjoining land—Adjoining land sold before completion—Covenant not enforceable—Contract superseded by conveyance.*—In December, 1898, a contract was entered into for the sale of a hotel and grounds, and it provided that the conveyance should contain a covenant by the purchaser, her heirs and assigns, restrictive of the user of the property and for the protection of the vendor's adjoining land. Between the date of the contract and its completion—a year later—all the vendor's adjoining land was sold without any mention of the existence of any restriction. In December, 1899, the purchase of the hotel was completed, and the conveyance contained a covenant by the purchaser in the terms of the restrictive stipulations in the contract.

Held (affirming Neville, J.), that the conveyance superseded the contract, and, there being no property to which the benefit of the restrictive stipulation contained in the latter could attach, that such stipulation was unenforceable.

Leggott v. *Barrett* (15 Ch. D. 306) applied.—MILLBOURN v LYONS, *C.A.*, 578; 1914, 1 Ch. 34.

3. *Water—Purchase of farm land by local authority for purpose of public water supply—Covenant to supply a reasonable amount of water to the farmhouse free of charge—Alteration and enlargement of farmhouse into residential mansion—Increase of user—User to wash a motor-car—Covenant severed and partly discharged.*—Where the local authority, in part consideration for the purchase of certain land on a farm, covenanted to supply a reasonable amount of water free of charge to the farmhouse and also to farm buildings, and the farmhouse was subsequently considerably enlarged and re-christened "Carldane Court,"

Held, that the farmhouse which existed at the date of the covenant had ceased to exist, and consequently that the liability of the local authority on the covenant to supply water thereto was gone; but that the covenant was severable, and the farm buildings remaining substantially unaltered, the local authority must still give a reasonable supply of water to such farm buildings.—HADHAM RURAL COUNCIL v. CHALLEN, *Neville, J.*, 635; 1914, 2 Ch. 128.

See also Landlord and Tenant, Lease, Restraint of Trade-Settlement.

CRIMINAL LAW:—

1. *Accessory before the fact—Definition of.*—Lomas, the appellant, was convicted of burglariously entering a dwelling-house and stealing property therefrom. It appeared that a man named King, who was indicted with Lomas, broke into the house between 7.30 and 11 p.m. on the 19th of July. Lomas was seen in the company of King at about 10 p.m. on that night, and also on the following morning. Lomas made a statement that, on the 19th of July, King asked him to hand over a jemmy in his possession; that he did so, and that later King returned it to him, together with the sum of 5s. 2d. The jury found a special verdict: "Lomas guilty; that he had a certain knowledge that the jemmy was wanted for an illegal purpose; that he handed the jemmy to King with the knowledge that it was wanted for a burglary. He did not know that it was wanted for this particular burglary."

Held, that, on these findings, the appellant was not an accessory before the fact, and that the conviction must be quashed.—REX *v.* LOMAS, *C.C.A.*, 220.

2. *Appeal—Conviction "Guilty, but insane"—Criminal Appeal Act*, 1907 (7 *Ed.* 7, *c.* 23), *s.* 3.—The Court of Criminal Appeal decided, following *Rex* v. *Machardy* (55 SOLICITORS' JOURNAL, 754; 1911, 2 K. B. 1144), that where the jury had returned a verdict of "Guilty, but insane," the right of the accused to appeal against his sentence did not include a right to appeal against the finding that he was insane, and dismissed an appeal by the appellant.

Held, dismissing the appeal, that where a jury has returned such a verdict, there is no right of appeal under section 3 of the Act of 1907, for the accused is not "a person convicted on indictment." There is no finding that the accused was guilty of the offence charged, but only that he was guilty of the act alleged as an offence, since it was established to their satisfaction that he was not responsible for his actions at the time, and therefore could not have acted with the felonious mind which is the essential element of the crime charged against him.

Decision of Court of Criminal Appeal (reported 30 T. L. R. 143) affirmed.—FELSTEAD *v.* DIRECTOR OF PUBLIC PROSECUTIONS, *H.L.*, 534; 1914, A. C. 534.

3. *Bribery—Misdemeanour at common law—Nature of offence—"Public and ministerial" officer.*—An indictment charged that the appellant Whitaker and M, an agent of Lipton (Limited), unlawfully conspired, combined, confederated and agreed together, and with N, another agent of Lipton (Limited), and with other persons, that divers sums of money and divers valuable securities should be corruptly given by M and N and Lipton (Limited) to Whitaker in his official capacity, the said Whitaker then being a

public and ministerial officer, to wit, a commissioned officer, namely, colonel commanding the second battalion of the Yorkshire Light Infantry Regiment, and that the same sums of money should be corruptly accepted by Whitaker in his official capacity as inducements, in violation of his official duty, to shew favours, and to abstain from shewing disfavour to M and N and Lipton (Limited), in relation to divers contracts, and proposed contracts, for catering between Lipton (Limited) and the commanding officers, then knowing the acts and omissions to be in violation of the official duty of Whitaker.

It was contended for the appellant that the indictment did not disclose a misdemeanour at common law, on the ground that Whitaker was not a "public and ministerial officer."

Held, that as a public officer is an officer who discharges any duty in the discharge of which the public are interested, and the more clearly so when he is paid out of funds provided by the public, a colonel of a regiment of the line is "a public officer," and he is also "a ministerial officer," as that word is used in this context in contrast to the word "judicial."

It was also contended for the appellant that the indictment was bad on the ground that it was not a misdemeanour at common law to conspire to bribe any other officer than a judicial officer, or an officer who was in the subordinate service of the administration of justice.

Held, that this was not so, and that the indictment was good.

Held, also, that even if the act of bribery alleged were not a misdemeanour at common law, the indictment for conspiracy was good, as alleging a conspiracy to do an act which was unlawful or wrongful in the sense of a tort, and that this was certainly so where fraud or corruption was involved in the agreement.—REX *v.* WHITAKER, *C.C.A.*, 707.

4. *Child convicted on indictment of simple larceny—Detention in "place of detention"—Power to order whipping—Duty of carrying out—Vested in sheriff or his delegate—Larceny Act*, 1861 (24 & 25 *Vict. c.* 96), *s.* 4—*Children Act*, 1908 (8 *Ed.* 7, *c.* 67), *ss.* 102 (1), 106, 108 *and* 109.—Where a child convicted on indictment of simple larceny is ordered to be detained in a "place of detention," the court can also pass on him a sentence of whipping, under section 4 of the Larceny Act, 1861, notwithstanding the terms of s. 102 (1) of the Children Act, 1908, by which such detention is substituted for imprisonment or penal servitude. In such a case, the duty of carrying out the sentence of whipping is on the sheriff or such person as he may designate, as, for instance, a police officer, or the head of the place of detention where the child is detained.—REX *v.* LYDFORD, *C.C.A.*, 363; 1914, 2 K. B. 378.

5. *Children—Causing unnecessary suffering—Putative father cohabiting with mother of illegitimate children—"Custody, charge and care"—Children Act*, 1908 (8 *Ed.* 7, *c.* 67), *ss.* 12 (1), 38 (2).—It being proved that unnecessary suffering had been caused by neglect to certain illegitimate children living in the same house with their mother and putative father,

Held, that the fact that in law the mother was the only parent of the children did not preclude the putative father from being in fact a person having the custody, charge and care of the children. —LIVERPOOL SOCIETY FOR PREVENTION OF CRUELTY TO CHILDREN *v.* JONES, *K.B.D.*, 723.

6. *Demanding money with "menaces"—Meaning of word "menaces"—Threat of injury to property—Larceny Act*, 1861 (24 & 25 *Vict. c.* 96), *s.* 45.—By section 45 of the Larceny Act, 1861, it is a felony to demand money with "menaces" or by force with intent to steal. The meaning of the word "menace" in the section is not confined to threats of physical violence or of certain injuries to character. A threat, made with intent to steal, to commit an act calculated to injure the property of another, may be a "menace" within the meaning of the section.—REX *v.* BOYLE, *C.C.A.*, 673.

7. *Evidence—Questions by constable to accused person—Reply—No caution—Admissibility.—Semble*, that statements made to a police constable by an accused person in reply to inquiry are admissible, although the accused person was not cautioned, provided that the constable before making the inquiry had not made up his mind to take such person into custody, or take proceedings against him.—LEWIS *v.* HARRIS, *K.B.D.*, 156.

8. Felo de se—*Attempt—Power to enforce hard labour.*—A conviction for attempted suicide is for attempted felony, and, therefore, under 3 Geo. 4, c. 114, will support a sentence imposing hard labour.—REX *v.* MANN, *C.C.A.*, 303; 1914, 2 K. B. 107.

9. *Forged stamps—Cancellation also forged—Stamp Duties Management Act*, 1891 (54 & 55 *Vict. c.* 38), *s.* 13.—A forged stamp, purporting to be a genuine postage stamp of Great Britain, of the denomination of £1, is a forged stamp within the meaning of section 18 of the Stamp Duties Management Act, 1891, although there is forged upon it a cancellation mark and it appears to be a cancelled stamp.—REX *v.* LOWDEN, *C.C.A.*, 157; 1914, 1 K. B. 144.

10 *Forgery—Demanding and obtaining money under forged instrument—Meaning of "instrument"—Letter—Forgery Act*, 1913 (3 & 4 *Geo.* 5, *c.* 27), *s.* 7.—A letter asking for a loan of money for a specific purpose may be a forged "instrument" within the meaning of section 7 of the Forgery Act, 1913.—REX *v.* CADE, *C.C.A.*, 288; 1914, 2 K. B. 209.

11. *Habitual criminal—"Is leading persistently a dishonest or criminal life"—Onus of proof on Crown—Prevention of Crime Act*, 1908 (8 *Ed.* 7, *c.* 59), *s.* 10.—On the trial of the appellant for being an habitual criminal, the deputy-chairman who tried the case told the jury that they had to consider whether since the appellant last came out of prison he had made up his mind to lead an honest life.

The court quashed the conviction on the ground that the deputy-chairman did not point out to the jury that the onus was on the Crown to prove that the appellant *is* leading a dishonest or criminal life. The jury might have been misled as to the onus by his summing up.

The importance of a correct summing up in these cases was emphasized.—REX *v.* YOUNG, *C.C.A.*, 100.

12. *Habitual criminal—"Is leading persistently a dishonest or criminal life"—Period to be inquired into—Prevention of Crime Act*, 1908 (8 *Ed.* 7, *c.* 59), *s.* 10, *sub-section* 2 (*a*).—The appellant was charged as an habitual criminal, having been convicted before the same jury of shopbreaking. After committing this offence he escaped arrest, and for five months from that time until his arrest was employed in a circus, and there was no evidence that during that period he was leading other than an honest life. The deputy-chairman, in his summing up, directed the jury that they might find that he had been leading a dishonest or criminal life during that period because he was a fugitive from justice. The jury convicted the appellant.

Held, that this was a misdirection, and that the conviction must be quashed.

Held, also, that in considering whether a prisoner is leading persistently a dishonest or criminal life within the meaning of section 10 (2) (a) of the Prevention of Crime Act, 1908, the jury may take into consideration the period immediately preceding his last arrest.—REX *v.* BROWN, *C.C.A.*, 69.

13. *Medical practitioners—Wilfully making false certificate under an Act relating to the registration of deaths—Registration of Births and Deaths Act*, 1874 (37 & 38 *Vict. c.* 88), *s.* 20 (2)—*Perjury Act*, 1911 (1 & 2 *Geo.* 5, *c.* 6), *s.* 4 (1) (*b*).—A registered medical practitioner wilfully makes a false certificate, under or for the purposes of an Act relating to the registration of births or deaths within the meaning of section 4 (1) (*b*) of the Perjury Act, 1911, where at the time he makes the certificate he knows that he is making false statements in a document which purports to be a certificate under the Registration of Births and Deaths Act, 1874, and which could be used under that Act, although the person stated to be dead is alive, and the practitioner has never attended such person, and does not intend that the certificate should be handed to a person required by the Act of 1874 to give information concerning the death.—REX *v.* RYAN, *C.C.A.*, 251.

14. *Plea of* autrefois acquit—*Indictment for sodomy quashed—Indictment for gross indecency—Same facts proved—Prisoner not in peril of latter offence on former indictment—Offences not substantially the same—Criminal Appeal Act*, 1907, *s.* 4 (2).—A conviction of the appellant for sodomy was quashed by the Court of Criminal Appeal, and the appellant was remanded in custody to take his trial on another indictment on the file. This indictment was for gross indecency, to which the appellant pleaded *autrefois acquit*. The judge told the jury that the issue was whether the charge on which the appellant stood indicted was a charge on which he had been in peril on the former indictment, and he ruled it was not, and directed them so to find. The judge then allowed the appellant to plead over, and he pleaded guilty, but appealed. The evidence given on the second trial was substantially that given on the first.

Held, that as the jury could not have convicted the appellant of gross indecency on the indictment for sodomy, and as the two offences were not exactly or substantially the same, the plea of *autrefois acquit* was rightly rejected.

The judge had also held that the plea of *autrefois acquit* could not be entertained by reason of the order of the Court of Criminal Appeal quashing the conviction.

Held, that this was not so, as by section 4 (2) of the Criminal Appeal Act, 1907, there had been a judgment and verdict of acquittal entered on the first indictment.—REX *v.* BARRON, *C.C.A.*, 557; 1914, 2 K. B. 570.

15. *Statement in prisoner's presence—Denial by prisoner—Admissibility.*—Statements made in the presence of the prisoner, though denied by him at the time, are admissible in evidence for certain purposes—*e.g.*, as part of the act of identification or as explanatory of it, but not as part of the *res gestæ*.

Decision in *Rex* v. *Norton* (54 SOLICITORS' JOURNAL, 602; 1910, 2 K. B. 496) considered, but not followed.—DIRECTOR OF PUBLIC PROSECUTIONS *v.* CHRISTIE, *H.L.*, 515; 1914, A. C. 545.

DEED:—

Construction—Charge on real estate—"Die seised"—Seisin—Copyhold—Unadmitted owner.—A. covenanted to pay certain annuities, with power of distress, or entry for the recovery of the same, upon the real estate of which he might die seised. At the time of his death A. was in receipt of the rents and profits of certain copyholds of which he had never been admitted tenant, but as to which the admitted tenant had declared that he stood possessed of the same in trust for A. and his heirs and assigns.

Held, that A. had not died "seised" of the copyhold premises. —RE NORMAN, *Joyce, J.*, 706.

DEED OF ARRANGEMENT:—

Deed for benefit of creditors generally—Registration—Deeds of Arrangement Act, 1887 (50 & 51 *Vict. c.* 57), *s.* 5.—Where a deed of assignment for the benefit of creditors is expressed to be for the benefit of those creditors whose names are set forth in the schedule thereto, that does not exclude other creditors who are not so named from coming in under the deed, nor prevent it from being a deed for the benefit of creditors generally.—RE ALLIX, *Bkcy.*, 250; 1914, 2 K. B. 77.

See also Bankruptcy, Goodwill.

DISCOVERY.—See Practice

DIVORCE:—

1. *Adultery of wife—Variation of settlement—Amount of allowance to wife—Insertion of clause* dum casta et sola vixerit. —Where a decree of dissolution of marriage is pronounced on the ground of the wife's adultery, the court, in making any variation of a settlement executed upon the marriage, ought as a general rule to insert in the settlement a condition that the allowance made to the wife should only be paid to her so long as she remains chaste and single. Allowance of £1 10s. a week reduced on appeal to £1.

Squire v. *Squire* (1905, P. 4) approved.

Lander v. *Lander* (1891, P. 161) not followed.—OLLIER *v.* OLLIER, *C.A.*, 754.

2. *Costs—Intervention—Wife's costs—No jurisdiction to order interventer to give security for such costs—Matrimonial Causes Act*, 1860, *s.* 7.—The court has no jurisdiction to order any person who intervenes under the Matrimonial Causes Act, 1860, s. 7, to prevent a decree *nisi* being made absolute, to give security for the wife's costs of an issue directed to be tried when once such intervention has been directed, without any terms as to costs having been imposed.—GILROY *v.* GILROY, *C.A.*, 378; 1914, P. 122.

3. *Hearing* in camera—*Discretion to grant degree in favour of guilty wife—Costs.*—Divorce case heard *in camera* in the interests of public morality on the statement of counsel that justice could not be done if evidence had to be heard in open court.

Decree granted in favour of wife notwithstanding her adultery, on the ground that her husband's gross misconduct had caused her fall.—CLELAND *v.* CLELAND, *P.D.*, 221.

4. *Nullity—Cross-petition for restitution—Practice—Discovery—Guardian* ad litem *of lunatic not so found—"Party" to action—Divorce Rule* 196—*Ord.* 31, *r.* 29.—It can be argued that a guardian *ad litem* of a lunatic not so found by inquisition is in the position of a "party to the suit," on the construction of Divorce Rule 196, and therefore an order for discovery can be made against him.—PASPATI *v.* PASPATI, *P.D.*, 400; 1914, P. 110.

5. *Restitution of conjugal rights—Act on petition—Jurisdiction—Service abroad—English marriage—Foreign domicile and residence—Declaration of validity of marriage—R.S.C., ord.* 25, *r.* 5.—No alteration of the law as regards service was affected by the Matrimonial Causes Act, 1884 (47 & 48 Vict. c. 68). The court cannot order service of the petition and citation in a suit for restriction of conjugal rights on a respondent who is out of the jurisdiction, nor can it entertain such a suit where the parties have neither domicile nor residence in England; nor has it jurisdiction to make a declaration of validity of a marriage, either under ord. 25, r. 5, or by virtue of any jurisdiction inherited from the Ecclesiastical Courts. The Legitimacy Declaration Act, 1858 (21 & 22 Vict. c. 93), negatives the existence of any such jurisdiction.—COUNTESS DE GASQUET JAMES *v.* DUKE OF MECKLENBURG-SCHWERIN, *P.D.*, 341; 1914, P. 53.

6. *Restitution of conjugal rights—Refusal of husband to comply with decree—Periodical payments—"Joint lives"—Matrimonial Causes Act*, 1884 (47 & 48 *Vict. c.* 68), *s.* 2.—An order for periodical payments under section 2 of the Matrimonial Causes Act, 1884, to a petitioner wife by a respondent husband, who refuses to comply with a decree of restitution of conjugal rights, cannot be made or secured for the life of the petitioner; it cannot operate for a period longer than the joint lives of the husband and wife. The proper form of order for periodical payments in favour of the wife in cases of restitution is, "That the respondent do pay to her during the joint lives of herself and the respondent, or until further order of the court," the sum fixed at the periods specified. —TANGYE *v.* TANGYE, *P.D.*, 723.

7. *Restitution of conjugal rights—Service out of the jurisdiction of petition and citation and of decree—New divorce rules.*—Two new rules. Rule 221: In a suit for restitution of conjugal rights, when it is stated in the petition, either that the parties to the suit were domiciled in England at the time of the institution thereof, or that they had a matrimonial home in England at the date when their cohabitation ceased, or that they were both resident in England at the time of the institution of the suit, the petition and citation may be served either within or without His Majesty's dominions.

Rule 222: When a suit for restitution of conjugal rights has been duly instituted, and a decree is made therein, such decree may be served either within or without His Majesty's dominions.

In the case of *De Gasquet James* v. *Mecklenburg-Schwerin* (58 SOLICITORS' JOURNAL, 341; 1914, P. 53) EVANS, P., had decided that, in a case where the parties were domiciled abroad, and had no matrimonial residence in England, the court had no power to permit a petition and citation for restitution of conjugal rights to be served on the respondent abroad. In the present case the element of domicile was present.—PERRIN *v.* PERRIN, *P.D.*, 513; 1914, P. 135.

8. *Wife's costs—Trial lasting more than one day—Guilty wife—Usual order—Special order.*—Justice to a husband may call for special orders as to a wife's costs, but the costs of a guilty wife are not to be limited as to any part thereof to a previous estimate, but are to be such as, on a strict taxation, are found proper to be allowed as between party and party.—PALMER *v.* PALMER, *P.D.*, 416; 1914, P. 116.

9. *Wife's petition—Adultery and cruelty—Decree* nisi—*Intervention—False swearing at trial—Concealment of material facts—Petitioner's adultery—Discretion.*—In future, whatever question there might be as to the future of the parties, the court, when asked to exercise its discretion in their favour, will refuse to assist those who have been guilty of perjury, and have denied on oath that they have concealed material facts from the knowledge of the court.—HAMPSON *v.* HAMPSON, *P.D.*, 474; 1914, P. 104.

EASEMENT:—

Reservation of private right of way—Right of owner of servient tenement to fix gate across road—Opening of gate in business hours—Access to road at any point—Right to erect fence along boundary between dominant and servient tenements—Obstruction. —Upon the sale of land with a shop erected thereon, the vendor reserved a right to use a private road laid out on a strip of the land sold abutting on other land retained by himself. The vendor afterwards built a shop on such other land, fronting partly on the private road and partly on a public road, but curved so as to leave a triangular piece of vacant land between the shop and the roads.

Held (reversing the decision of Sargant, J.), that the purchaser was entitled to erect and maintain a gate at the end of the private road next to the public road, subject to its always being kept open during the vendor's business hours, and was also entitled to, erect a fence on her land to divide the private road from the vacant land, subject to a gate being left in the fence for the convenience of the vendor and his customers.

Interference with a private, as distinguished from a public, right of way, must, to be actionable, be not merely appreciable, but substantial.—PETTY v. PARSONS, *C.A.*, 721; 1914, 1 Ch. 704.

See also Light, Way.

EDUCATION:—

Non-provided school—Contract of teacher with managers—Notice of determination by local education authority—Dismissal on "educational grounds"—Appeal to Board of Education—

Jurisdiction of court—Education Act, 1902 (2 *Ed.* 7, *c.* 42), *s.* 7, *sub-sections* (1) (*a*) (3).—A local education authority, acting upon reports by Government inspectors of schools, instructed the managers of a non-provided elementary school to serve notice of dismissal on the head master on educational grounds, and the managers having refused to do so, the authority served the notice themselves. The head master having applied for an injunction to restrain the local authority from acting upon the notice, pending the result of an appeal by the managers to the Board of Education under the Education Act, 1902, s. 7 (3),

Held, that, as the plaintiff did not deny that his dismissal was on educational grounds, but only questioned the sufficiency of the grounds, there was no case for the interference of the court, and he was not entitled to an injunction.

Decision of Eve, J., affirmed.—MITCHELL v. EAST SUSSEX COUNTY COUNCIL, *C.A.*, 66.

See also School.

EVIDENCE :—

Ancient book—Admissibility—Recognised authority.—An ancient book written in the seventeenth century was held not to be admissible in evidence in an action to obtain a declaration that certain property formed part of the parish church, the defence being that the property really formed part of what had been a conventual building.—FOWKE v. BEVINGTON, *Astbury, J.*, 379.

EXECUTORS :—

1. *Administration — Creditor's action — Executors carrying on business of testator—Insolvency—Executor's right of indemnity subject to satisfaction of liability to estate—Priority as between creditors of executors and dissenting creditors of testator.*—A testator by his will directed his executors to carry on his business as long as they should think fit. At his death there was a considerable balance of assets over liabilities. The executors, with the financial assistance of the testator's bank, and the assent of some creditors, carried on the business for three years, when it had become insolvent. In an administration action commenced by the bank against the executors,

Held, that the executors' right of indemnity, to which the bank claimed to be subrogated, was subject to the satisfaction of their own liability to the estate, and that creditors of the testator who had not assented were entitled to be paid out of the available assets in priority to the bank and other creditors of the executors.

Decision of Warrington, J., reversed

Form of order for accounts and inquiries in administration discussed.—RE EAST, *C.A.*, 513.

2. *Administration—Insolvent estate—Preferment of creditors—Reversionary interest—Assets in hand—Rights of executor.*—The executrix of an estate of which a reversionary interest formed part, without disposing of the reversionary interest, paid the debts of the testator to a greater amount than the other assets of the estate. The reversionary interest subsequently fell in.

Held, that the executrix had a right to repay herself in full the money she had herself paid on behalf of the estate.—RE JONES-PEAK *v.* JONES, *Warrington, J.*, 579 ; 1914, 1 Ch. 742.

3. *Evidence of debt—Appointment of alleged debtor as executor—Evidence of continuing intention to forgive the debt—Release.*—Where a testator wrote a letter offering a sum of £150 to her friend, and making certain suggestions with regard to her giving her an I O U, and paying interest thereon, and wound up the letter as follows :—"I engage not to use the I O U during your life ; also not to call in the loan, but leave it with you as long as you want it, and the interest is paid," and subsequently seemed offended when the friend offered to pay the capital, and said, "I thought it would just fall into your hands when I died. The I O U is in an envelope with my papers, directed to you, and when I die all you have to do is to destroy it," and finally appointed the friend her executor,

Held, that there was a sufficient legal release of the debt by the appointment of the friend as executor, coupled with the continuing intention to release the debt.

Strong v. *Bird* (18 Eq. 315) applied.—RE GOFF, *Sargant, J.*, 535.

4. *Landlord and tenant—Repairing covenant in lease—Death of assignee intestate—Executor* de son tort—*Liability of.*—The plaintiffs sued the defendant as executor *de son tort* for breaches of covenant in a lease of which they were the lessors and the defendant's mother had been assignee. The defendant's mother died in 1910 intestate. No letters of administration were taken out. From that date onwards the defendant, who had collected the rents in his mother's lifetime, collected them for his sister. The sister died in 1912. The defendant continued to collect the rents and, after paying ground-rent to the plaintiffs, held the balance for the owners, whoever they might be. In December, 1912, the plaintiffs first discovered that the defendant's mother was dead, and, acting on the defendant's suggestion, they took possession of the premises. Subsequently they brought this action. There were no assets of the mother's estate.

Held, that the defendant was not liable by privity of estate since the term had not vested in him, and he was not liable by estoppel.

Position of a lawful executor distinguished.—STRATFORD ON AVON CORPORATION *v.* PARKER, *K.B.D.*, 473 ; 1914, 2 K. B. 562.

5. *Retainer—Administration of assets—Debt arising from breach of trust by testator—Privity of one of the executors—Another executor appointed trustee after testator's death—Speciality debts—The Administration of Estates Act* (*Hinde Palmer's Act*), 1869 (32 & 33 *Vict. c.* 46).—The executors' right of retainer has been enlarged by Hinde Palmer's Act, 1869 (32 & 33 Vict. c. 46).

Opinion, but not decision, of Neville, J., in *Re Jennes* (53 SOLICITORS' JOURNAL, 376) followed on this point.—RE HARRIS, *Sargant J.*, 653.

See also Administration, Limitations, Statute of, Probate.

EXTRADITION :—

Order in Council—Order not proved—Committal—Writ of habeas corpus—*Extradition Act*, 1870 (33 & 34 *Vict. c.* 52), *ss.* 2, 5, 10.—A prisoner was committed for extradition to Italy, without formal proof of the Order in Council applying the Extradition Act, 1870. On an application for a writ of *habeas corpus*,

Held, that the application must be refused, on the ground that there was nothing in the Order in Council which would have helped the prisoner.—REX *v.* GOVERNOR OF BRIXTON PRISON, *K.B.D.*, 68 ; 1914, K. B. 77.

FACTORS :—

Pledge in Paris to agent of defendant in London—Agent not acting in good faith—Title of defendant.—The plaintiffs, jewel dealers in Paris, handed certain pearls to A. in Paris in consequence of a statement made by him to them to the effect that he knew of a probable purchaser. A. pawned them, and then took the ticket to M., another Paris jewel dealer, who redeemed the pearls, and sent them to S., the defendant, who carried on the business of a pawnbroker in London. S. advanced £1,200 on the pearls. The fraud of A. having been discovered, A. committed suicide, and the plaintiffs then brought an action against S. claiming the return of the pearls or their value, £2,000.

Held, that there was evidence that M. had not acted in good faith, and that A. was not a mercantile agent within the meaning of the Factors Acts. S. had therefore not obtained a title to the pearls, and the judgment for the plaintiffs at the trial of the action was right.

Decision of Bray, J. (29 T. L. R. 185, 108 L. T. 214), affirmed.—MEHTA *v.* SUTTON, *C.A.*, 29.

FALSE IMPRISONMENT :—

Action for—Defence—Arrest by private individual without warrant—Felony not committed by plaintiff—Other felonies committed by some other person—Reasonable and probable cause.—The plaintiff sued the defendants for damages for false imprisonment. The plaintiff was given into custody by the defendants on a charge of stealing a book, of which charge he was subsequently acquitted. At the trial the jury found as a fact that the defendants reasonably believed that the plaintiff had been guilty of other thefts from the defendants.

Held, that as the felony for which the defendants gave the plaintiff into custody had not in fact been committed, the basis upon which they could rest any defence of lawful excuse for the wrongful arrest of another failed.—WALTERS *v.* SMITH & SONS, *K.B.D.*, 186 ; 1914, 1 K. B. 595.

FERRY :—

Disturbance—New traffic—Opening of public park on river bank—Declaration of title to ancient ferry as foundation of consequent relief—Injunction against disturbance.—The plaintiffs claimed to be entitled to an ancient ferry across the River Thames, and there was evidence of the existence of a point-to-point ferry for over 200 years. The defendants, in 1906, established a new ferry about a quarter of a mile lower down the river, in order to meet a demand to cross from the towpath to public grounds which had recently been acquired and opened on the other side of the river.

Held (Buckley, J., dissenting), that, upon the evidence, the plaintiffs were entitled to the franchise of a ferry from point to point, and that the traffic carried by the defendants' ferry was not substantially a new traffic, but largely a colourable diversion from

the plaintiffs' ferry. An injunction, therefore, was granted against disturbance.

Decision of Warrington, J., reversed.

The court ought not to make any declaration of right, except as a basis for consequent relief, where the right has been infringed.—EARL OF DYSART *v.* HAMMERTON & Co., *C.A.*, 378; 1914, 1 Ch. 822.

FISHERY :—

Protection of fishers—Prohibition of trawling—Bye-law—Validity—Sea Fisheries Regulation Act, 1888 (51 & 52 *Vict. c.* 54), *s.*—A local committee under the Sea Fisheries Regulation Act made bye-laws prohibiting trawling in a certain bay for the protection of fishers for crabs.

Held, that the bye-laws were valid.—FRIEND *v.* BREHOUT, *K.B.D.*, 741.

FIXTURES :—

Hire-purchase agreement—Automatic sprinkler—Subsequent issue of debentures—Default in payment—Receiver appointed in action—Right of unpaid vendor to enter and remove sprinkler.—A company entered into a contract for the installation of an automatic sprinkler for fire prevention at their factory, payment to be made by equal instalments in four years, and the sprinkler to remain the property of the contractors, who were to be at liberty to enter and remove it in case of default, until the last instalment was paid. The company subsequently issued debentures in the ordinary form. Default having been made in payment, the trustees for the debenture-holders commenced an action to wind up the company, and a receiver was appointed by the court.

Held, that, notwithstanding the possession of the receiver, the contractors were at liberty to enter and remove the installation.

Decision of Eve, J., affirmed.

Re Samuel Allen & Sons (Limited) (1907, 1 Ch. 575) approved.—RE MORRISON, JONES & TAYLOR (LIMITED), *C.A.*, 80; 1914, 1 Ch. 50.

FRAUDS, STATUTE OF :—

1. *Memorandum in writing—Construction of memorandum "I agree to give £150 a year, and I hope a bit more"—Annuity or allowance—Period of—Mere expression of intention to grant allowance—Termination at death of grantor.*—On the day before his daughter's wedding the father wrote to his future son-in-law and said: "My dear Bert,—When you marry my daughter Lydia I agree to give £150 a year, and I hope a bit more." The marriage took place, and the £150 was paid each year till the death of the testator, whose executors now applied to have the document construed by the court.

Held, that the document was only an expression to his prospective son-in-law of an intention on the part of the father that he would make his daughter an allowance of £150 a year, to be payable during the joint lives of the father and his daughter.

Ex parte Annandale, Re Curtis (1834, 4 Deacon and Chitty, 511), followed.—RE LINDREA, *Sargant, J.*, 47.

2. *Sufficient memorandum of agreement—Signature of agent—Statute of Frauds* (29 *Car.* 2, *c.* 3), *s.* 4.—A litigant in an action authorized his solicitor to forward certain documents to another litigant, which documents were subsequently held by the court to constitute a note or memorandum in writing of a contract sufficient to satisfy section 4 of the Statute of Frauds. When the litigant gave the authority to his solicitors to forward these documents he did not contemplate that they might be used against him in other proceedings to enforce that contract, which event in fact happened.

Held, that although in giving the authority the litigant might not have contemplated that the documents would form a note or memorandum of the contract sufficient to satisfy the Statute of Frauds, the authority to forward the documents was not invalidated thereby, and the litigant was liable for all the legal consequences following from the forwarding of the said documents which would have followed had the defendant forwarded the documents himself.—DANIELS *v.* TREFUSIS, *Sargant, J.*, 271; 1914, 1 Ch. 788.

See also Vendor and Purchaser.

FRIENDLY SOCIETY :—

1. *Conversion into company—Alteration of memorandum of association—Enlargement of objects—Special resolution—Validity—Members of company—Friendly Societies Act*, 1896 (59 & 60 *Vict. c.* 25), *s.* 71—*Companies Consolidated Act*, 1908 (8 *Ed.* 7, *c.* 69), *ss.* 9, 24.—A friendly society having a very large number of members was converted into a limited company, but no shares were allotted to the members. Subsequently the company passed a special resolution altering and extending the objects of the company, and applied to the court for an order confirming the resolution.

Held, that no shares having been allotted there were no members of the company and no effective resolution which the court could confirm.—RE BLACKBURN PHILANTHROPIC ASSURANCE CO., *Eve, J.* 798.

2. *Original rules—No power to resolve to wind up voluntarily—Alteration of rules—Evidence of acquiescence of all necessary for such an alteration—New rule* ultra vires.—Where by its original rules a friendly society was unable to pass a resolution for a voluntary winding-up, but where at a subsequent meeting it was purported by the unanimous vote of those present to create a new rule that a resolution for voluntary winding-up could be carried if passed by a majority of two-thirds, and where subsequently such a resolution was passed by such a majority under the alleged new rule.

Held, that in the absence of evidence that the new rule was ratified by the acquiescence of all the members of the society, such new rule was *ultra vires*, and an order for compulsory winding-up was accordingly made.—RE TEAN FRIENDLY SOCIETY, *Astbury, J.*, 234.

GAMING :—

Partnership—Account—Action for—Bookmakers—Betting Transactions—Public policy—Gaming Act, 1892 (55 & 56 *Vict. c.* 9).—Where two persons have contributed a sum of money in equal shares between them, and the money has been placed in the hands of one of them for the purpose of employing it in illegal gambling transactions, the one who has placed his money in the hands of the other is entitled to an account of the partnership dealings in case there should be any of his capital which had not been lost or expended, although it is always open to the defendant, on the taking of such an account, to object that the moneys in his hands are profits, and accordingly not recoverable by virtue of the Gaming Act, 1892 (55 & 56 Vict. c. 9).

Such a case is analogous to the case of the deposit of moneys with a stakeholder.—KEEN *v.* PRICE, *Sargant, J.*, 495; 1914, 2 Ch. 98.

GARNISHEE :—

Counsel's fees in hands of solicitors—Not debts—Assignment—Officer of the court—Money paid by mistake ordered to be refunded—Right of appeal—Ord. 45, *r.* 1.—Counsel's fees are not debts, and cannot be recovered in legal proceedings, or made the subject of a garnishee order attaching debts, whether the solicitor has received the money with which to pay such fees or not.

The only apparent exception to this rule results from the principle that the court will not allow any of its officers, such as a trustee in bankruptcy, to retain money paid to him under a mistake of law, but will order it to be refunded, or paid to the person really entitled to it, as a matter of honesty, though that person might not be able to sue for it.

Ex parte James, Re Condon (L. R. 9 Ch. 609), distinguished.

Re H. & C. Hall (2 Jur. N. S. 1076) disapproved.—WELLS *v.* WELLS, *C.A.*, 555.

GAS :—

Gas company—Mains—Service pipes—Meaning of "mains"—Prohibition against extending mains.—By a local Act it was provided that it should not be lawful for the defendants to extend their existing mains for the supply of gas in the parishes of B. and W. without the plaintiffs' consent. The defendants, without such consent, laid a two-inch pipe, 88 yards long, from one of their mains to supply a foundry with gas for power and lighting.

Held, that the pipe was a service pipe, and not a main within the meaning of the Act, either by reason of its position or capacity, or otherwise.—WHITTINGTON GAS LIGHT AND COKE CO. *v.* CHESTERFIELD GAS AND WATER BOARD, *C.A.*, 577; 1914, 2 Ch. 146.

GOODWILL :—

Deed of assignment for benefit of creditors—Sale of business by trustee—Solicitation of old customers by assignor.—The owner of a business executed a deed of assignment of his property for the benefit of his creditors. The business having been sold for the benefit of the creditors, the assignor joined another firm, and solicited his old customers.

Held, that the alienation of the business being compulsory, and for the benefit not of the person who carried on the business, but of his creditors, the assignor could not be restrained by the purchaser of the business from soliciting his old customers.—GREEN *v.* MORRIS, *Warrington, J.*, 398.

HIGHWAY :—

Interruption under Statute—Bridge over railway—Maintenance—Measure of obligation—Heavy motor traffic—Railways Clauses Consolidation Act, 1845—*Locomotives Act*, 1861—*Locomotives on Highways Act*, 1896—*Motor-car Act*, 1903.—A railway company by statutory authority interrupted a highway by the construction of a railway. The statute required the company to build and maintain a bridge to carry the highway over the railway. Subsequently heavier traffic, than at the time the bridge was built, came or ought to have been expected to come upon the highway. The railway company affixed a notice to the bridge, under the provisions of the Motor-car Act, 1903, to the effect that the bridge was not sufficient to carry the heavy traffic.

Held, that the railway company was obliged to maintain the bridge in a condition to carry such traffic as might be expected to come upon the highway from time to time, and that this obligation could not be limited by adopting the provisions of the Locomotives and Motor car Acts.—ATTORNEY-GENERAL *v.* GREAT NORTHERN RAILWAY, *Warrington, J.*, 595.

2. *Repair—Private bridle-way and footpath set out under inclosure award—Presumption as to dedication before* 1835—*Presumption as to compliance with section* 23 *of the Highway Act*, 1835—*Absence of evidence of intention of a particular owner to dedicate at a particular time—Private Street Works Act*, 1892, *ss.* 6, 7.—In an appeal by the owner of property adjoining a way which had become a street, against a provisional apportionment of expenses with regard to making up the way under the Private Street Works Act, 1892,

Held, affirming the decision of the Court of Appeal (57 SOLICITORS' JOURNAL, 158; 1913, 1 K. B. 481, 11 L. G. R. 211), that the absence of evidence of any intention of any particular owner at any particular time to dedicate the way as a highway did not prevent section 23 of the Highway Act, 1835, from applying to it, and that as there was no evidence from which compliance with the requirements of that section could be inferred, the way was not a highway repairable by the inhabitants at large, and was a "street" which the council could make up under the provisions of the Private Street Works Act, 1892.—CABABE *v.* WALTON-UPON-THAMES DISTRICT COUNCIL. *H.L.*, 270; 1914, A. C. 102.

3. *Roadway not made up to full width—Unmade strip—Alleged dedication as footpath—User by public—rights of adjoining owner in highway*—Where a street has been laid out, but only made up on one side, there can be no dedication of the part made up apart from the other.

Held, that the defendant, the owner of a building estate, must be presumed to have dedicated the whole width of the road as a highway, so that the plaintiffs, as owners of adjoining property were entitled, to a reasonable extent, to cross on foot or with vehicles over the unmade portion of the road.

Decision of Court of Appeal (57 SOLICITORS' JOURNAL, 11; 1912, 2 Ch. 633) affirmed.—ROWLEY *v.* TOTTENHAM URBAN COUNCIL, *H.L.*, 233; 1914, A. C. 95.

See also Nuisance.

HOUSING ACT :—

Appeal to Local Government Board against closing order—Procedure on appeal—Obligation to hear appellant to see inspector's report—Housing and Town-Planning, &c., Act, 1909 (9 *Ed.* 7, *c.* 44), *ss.* 17, 20.—On an appeal by the owner to the Local Government Board, under the Housing, Town-Planning, &c., Act, 1909, from the refusal of a local authority to determine a closing order, the appellant has a right to be heard, and to see the inspector's report on the public inquiry held by him; and it is not competent to the board to determine the question before them as to whether or not the closing order should be confirmed or discharged solely upon the report of the inspector and the evidence laid before them in writing.

So held, Hamilton, L.J., dissenting.

Decision of Divisional Court (1913, 1 K. B. 463, 11 L. G. R. 242, 82 L. T. K. B. 313) reversed. — REX *v.* LOCAL GOVERNMENT BOARD, *C.A.*, 10; 1914, 1 K. B. 160 (but since reversed by the House of Lords, *ante*, p. 715).

INFANT :—

Contract—Fraudulent misrepresentation as to age—Loan obtained from money-lender by infant—Action to recover loan as damages for fraudulent misrepresentation or as money had and received—Unenforceability of contract.—The defendant, an infant, obtained a loan from the plaintiffs, who were registered money-lenders, by representing to them that he was of full age. Horridge, J., gave judgment for the plaintiffs, on the ground that the defendant was liable to refund the money on the equitable principle of restitution.

Held, that to uphold the decision below would amount to enforcing a void contract, and, therefore, that the defendant was entitled to judgment.—LESLIE *v.* SHIELL, *C.A.*, 453.

INSURANCE :—

1. *Marine—Policy—Captain's effects—Total loss—Portion of effects on shore—Liability.*—A policy of insurance was effected by the captain of a ship upon his effects against total loss of vessel only, and including perils of the seas, fire, &c. In consequence of a dynamite explosion the vessel was totally lost at a time when the captain was on shore, certain of his effects being on board, and a portion, including clothes and a watch, being on shore.

Held, that the policy covered the whole of the captain's effects at the time of the loss, and was not confined to such effects as were actually on board.—ANSTEY *v.* OCEAN MARINE INSURANCE CO., *K.B.D.*, 49.

2. *Marine insurance—Policy—Running down clause—Construction—Collision with another ship—Other ship's collision with a third ship—Insurer's liability for damage to third ship.*—A ship, the owners of which were insured on the terms that, if the ship came into collision with any other ship, and in consequence thereof the assured became liable to pay damages, the damages should be paid by the insurers, collided with another ship, and the other ship, partly in consequence of the collision and partly in consequence of suction and backwash caused by the insured ship, collided with a third ship.

Held, that the underwriters were liable under the policy to the owners of the insured ship for the damage done to the third ship.—FENWICK & CO. *v.* MERCHANTS MARINE INSURANCE CO., *K.B.D.*, 756.

3. *Workmen's compensation—Company in liquidation—Employee of company—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 58), *s.* 5—*Assurance Companies Act*, 1909 (9 *Ed.* 7, *c.* 49), *s.* 17.—Section 17 of the Assurance Companies Act, 1909, was held to be applicable where a claim by an employee of a colliery company under the Workmen's Compensation Act, 1908, was made in the liquidation of the corporation, who had agreed to indemnify the colliery company, who had themselves subsequently gone into liquidation, in respect of a claim under that Act, and it was held that an employee could only lodge a claim for 75 per cent. of the capital value of the amount to which he was entitled in the liquidation of the guarantor corporation.—RE LAW CAR AND GENERAL INSURANCE CORPORATION, *Astbury, J.*, 251.

4. *Workmen's compensation—Policy against claims—Condition—Assured to give notice of claims—Request for arbitration*—A policy of insurance against claims arising under the Workmen's Compensation Act provided that the assured should forward to the insurance company every notice of claim. A notice of claim accompanied by a request for arbitration was sent to the assured, who forwarded the notice of claim, but not the request for arbitration. The company resisted liability on the ground that the assured had not forwarded every notice of claim.

Held, that the request for arbitration was only a step in the proceedings to obtain an award and was not a notice of claim.—RE WILKINSON AND CAR AND GENERAL INSURANCE CORPORATION *C.A.*, 233.

JUSTICES :—

1. *Kinematographs—Licensing—Council of a county borough—Declaration of justices sitting in petty sessions—Power to state case—Cinematograph Act*, 1909 (9 *Ed.* 7, *c.* 30), *ss.* 5, 6.—Where justices sitting in petty sessions are exercising powers delegated to them by the council of a county borough under sections 5 and 6 of the Cinematograph Act, 1909, they have no power to state a case.—HUISH *v.* LIVERPOOL JUSTICES, *K.B.D.*, 83; 1914, 1 K. B. 109.

2. *Mines—Coalmine—Employee sitting as justice—Disqualification—Acquittal*—Certiorari—*Coal Mines Act*, 1911 (1 & 2 *Geo.* 5, *c.* 50), *s.* 103 (2).—Two persons employed in a coal mine were summoned before justices under section 74 of the Coal Mines Act, 1911. They were acquitted, and it was subsequently discovered that one of the justices was disqualified under section 103 (2) of the Act as being employed in a mine.

Held, that the acquittals could not be quashed, as the defendant had been in danger of conviction, and would be prevented from pleading *autrefois acquit* on any subsequent occasion.—REX *v.* SIMPSON, *K.B.D.*, 99; 1914, 1 K. B. 66.

LAND CHARGES:—

Receiver—Elegit—*Judgments Act* 1838 (1 & 2 *Vict. c.* 110), *s.* 13—*Judgments Act*, 1864 (27 & 28 *Vict. c.* 112), *s.* 1—*Land Charges Act*, 1900 (63 & 64 *Vict. c.* 26), *s.* 2—*Land Charges Registration and Searches Act*, 1888 (51 & 52 *Vict. c.* 51), *s.* 5.—An order appointing a receiver by way of equitable execution of the rents of incumbered property, which could not be taken under a writ of *elegit*, does not operate as a charge until it is registered under section 5 of the Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 5), *s.* 5.—LORD ASHBURTON *v.* NOCTON, *Sargant, J.*, 635.

LANDLORD AND TENANT:—

1. *Covenant—Construction—Electric advertisement—Alteration in elevation or architectural decoration of building—Removable advertisement.*—When a lessee covenanted that he would not make or permit to be made any alteration in the elevation of the buildings or in the architectural decoration thereof,

Held, that the words of the covenant referred to an alteration of the fabric, and not to an alteration in appearance caused by the erection of a temporary electric advertisement, which could be removed at any time without hurting the structure.

Held, accordingly, on a summons under order 44a to determine the construction of the covenant, that such an erection was not a breach thereof.

Dimmer v. *Bickmore* (1903, 1 Ch. 158) distinguished.—RE LONDON COUNTY COUNCIL AND WEIR'S LEASE, *Astbury, J.*, 579.

2. *Covenant not to underlet without consent—Consent not to be withheld in the case of a respectable and responsible person—What amounts to withholding consent—Underlease granted by lessee without consent after a reasonable time had elapsed from application for consent—No breach of covenant—What is a reasonable time.*—Where the lessee covenanted not to assign or underlet or part with the possession of the demised premises without the consent of the plaintiffs being first obtained, such consent "not to be withheld in the case of a respectable and responsible person," it was held that such covenant had not been broken where the lessee verbally informed the secretary of a company, who were the lessors, on the 3rd of April, 1913, that he proposed to sub-let to a tenant (whom both parties admitted at the time was in fact a respectable and responsible person), if the company had no objection, and he would like to know by the 14th of April, as his proposed sub-tenant wanted possession on that day, and hearing nothing from the company or their secretary, let the sub-tenant into possession on that day, because such conduct amounted to a withholding of consent on the part of the company, although they were, in fact, never informed of the matter by their secretary.—LEWIS & ALLENBURY *v.* PEGGE, *Neville, J.*, 155; 1914, 1 Ch. 782.

3. *Forfeiture—Breach of covenant—Notice of particular breach—Sufficiency of notice—Conveyancing and Law of Property Act*, 1881 (44 & 45 *Vict. c.* 41), *s.* 14 (1).—In an action to recover possession of premises on the ground of breach of covenant by the lessee the schedule of dilapidations attached to the notice was headed: "Schedule of dilapidations allowed to accrue in and about the properties known as Nos. 35, 37, 39, 41, 43 and 45, Menotti-street, Bethnal Green," and dealt with repairs alleged to be necessary under general headings, such as roofs, front and back, rooms and staircases generally, without (except in two or three instances) referring specifically to the different houses, and concluded: "Well and substantially repair, maintain and put the premises and appurtenances in thoroughly good repair and condition, and note that the completion of the items mentioned in this schedule does not excuse the execution of other repairs if found necessary." The official referee upheld the defendant's contention that, as the notice (1) did not allege any particular breaches; (2) or if it did, it did not specify to which of the houses the respective breaches of covenant were to be referred; and (3) by reason of the proviso that the completion of the items mentioned in the schedule should not excuse the execution of other necessary repairs, it was insufficent under section 14 of the Conveyancing Act, 1881. The Divisional Court held that the notice was sufficient. The defendant appealed.

The Court of Appeal (Vaughan Williams, L.J., dissenting) dismissed the appeal.

Decision of Divisional Court (Avory and Lush, JJ., 109 L. T. R. 210) affirmed.—JOLLY *v.* BROWN, *C.A.*, 153; 1914, 2 K. B. 109.

4. *Licensed premises—Tied house—Lessee tied so long as lessors "Shall be willing to supply beer at the fair market price"—Meaning of proviso in lease.*—By the terms of the lease of licensed premises the lessee covenanted that he would not during his tenancy buy or dispose of any beers other than such as should have been purchased from the lessors, provided that they were willing to supply the same to him "at the fair market price."

Held, that the "fair market price" was the standard price at which brewers supplied tied tenants, and was not the price at which a lessee if not tied by any covenant could buy beer of the same quality in the open market.

Decision of Court of Appeal (29 T. L. R. 145), directing a new trial, set aside.—CHARRINGTON & Co. *v.* WOODER, *H.L.*, 152; 1914, A. C. 71.

LANDS CLAUSES ACT:—

Compulsory taking of land—Payment of the purchase-money into court—Application for payment out—Costs—Letters of administration—Lands Clauses Consolidation Act, 1845 (8 & 9 *Vict. c.* 18), *s.* 80.—The costs of the applicants for payment out of taking counsel's opinion as to who are entitled to a fund paid into court by a body purchasing land under compulsory powers, under section 80 of the Lands Clauses Consolidation Act, 1845, are not costs payable by the body exercising the compulsory powers; but the costs of an application to the Probate Division to assume death, are costs so payable, because they are costs necessarily antecedent to the obtaining of a grant of administration, and the costs of obtaining a grant of administration are payable by the body exercising the compulsory powers.

Re Lloyd and the North London Railway (City Branch) Act, 1861 (1896, 2 Ch. 397), applied.—RE GRIGGS, *Astbury, J.*, 612.

LEASE:—

1. *Covenant to renew—Construction—Perpetual renewal—Presumption.*—By a lease made in 1824 the defendants demised certain premises to the plaintiff's predecessors for a term of twenty-one years from the 29th of September, 1824, at a rent of 8s. per annum, the lease containing a covenant whereby the lessees agreed that at the expiration of the first eleven years of the term thereby granted, upon surrender of the lease, and payment of a fine by the lessee, they would, at the cost of the lessee, grant to the lessee a new lease of the premises for a term of twenty-one years, to commence from the expiration of the said eleven years, at and under the like rent and covenants, as were therein contained, and so often as every eleven years should expire the lessors would grant to the lessee such new lease upon surrender of the old and payment of a fine. The lease was surrendered and renewed from time to time. On the 28th of September, 1912, the plaintiff offered to surrender the lease, but the defendant declined to grant a new lease.

Held, that, notwithstanding any presumption there might be against a right of perpetual renewal, the court must construe the words with a fair and proper meaning, and that upon the true construction the effect of the covenant was to confer upon the lessee a perpetual right of renewal every successive eleven years.—WYNN *v.* CONWAY CORPORATION, *Joyce, J.*, 432.

2. *Restrictive covenant—Covenant not to demise adjoining land for erection of other than specified buildings, such buildings not to exceed certain height—Tenancy agreement—Erection of bandstand—No authority in tenancy agreement—Construction of covenant—No breach of covenant.*—The plaintiff was the owner and occupier of certain leasehold premises in C. Crescent, which, in 1842, had been the subject of a demise for a term of ninety-nine years by the predecessors in title of the D. Harbour Board, whereby the lessors covenanted not, during the continuance of the term, to demise or lease any part of the ground between C. Crescent and the sea for the erection of any building other than public baths, with or without libraries, nor suffer any such building to be erected thereon to exceed the height of 15 ft. 7 in. In 1880 a bandstand was erected on the land which had been laid out as public gardens, and in 1893 an agreement was entered into between the board and the corporation for a yearly tenancy of the gardens. In 1911 the corporation executed improvements in the gardens, and erected a new bandstand on the site of the old, exceeding the height of 15 ft. 7 in. In an action by the plaintiff for a mandatory order to remove the bandstand,

Held, that upon the true construction of the covenant contained in the lease of 1842, the board's predecessors had covenanted only not to demise the land in question for the erection of other than the specified buildings, and not to permit such buildings, if erected, to exceed the height of 15 ft. 7 in., and that there was no covenant not to permit any buildings erected thereon to exceed that height; and that there being no evidence that the board had leased, for the purpose of, or authorized the erecting of, the bandstand, there had been no breach of the covenant.—PALLISER *v.* DOVER CORPORATION, *Joyce, J.*, 379.

3. *Restrictive covenant—Premises not to be used except for business of hosier—Sale of overcoats and sports jackets—Hosiery—*

Articles usually sold by hosiers.—In a lease of certain premises the lessees covenanted that the demised premises should not without the consent in writing of the lessors, be used in any way except for the purpose of carrying on therein the business or businesses of a hosier or hatter and mercer, including the sale of fancy waistcoats and mackintoshes.

Held, that the sale of overcoats (not being mackintoshes) and sports jackets on the premises was a breach of the covenant.—WARTSKI *v.* MEAKER, *Joyce, J.*, 339

LIBEL :—

Privilege—Proceedings in contemplation—Statement made by witness in presence of intending litigant's solicitor.—The plaintiff, who claimed to be the son of a peer and entitled to the Waterford estates, commenced an action for slander against the defendants. He averred that the alleged slander was uttered at an interview at which the female defendant was present with himself and his solicitor by arrangement in order to obtain information from her, which was to be used in an action he was contemplating bringing for the purpose of obtaining a declaration of legitimacy. The defendant in effect said that the plaintiff was an impostor, and that she would do all she could to prevent him from "succeeding in his claim to the title and estates." The master decided that the occasion was privileged, and struck out the statement of claim as disclosing no reasonable cause of action, and being frivolous and vexatious and an abuse of the process of the court. The judge at chambers affirmed the master. The plaintiff appealed.

Held, that the order appealed from was right, as the interview was a privileged one by a solicitor with a person who might or might not be a witness for his client, and that the defamatory observations that were complained of were relevant to that issue and only added something that was material.

Watson v. *McEwan* (1905, A. C. 480) followed.—BERESFORD *v.* WHITE, *C.A.*, 670.

See also Probate.

LICENSING LAW :—

1. *Free house—Increase of duty—Finance* (1909-10) *Act*, 1910—*Recovery by lessee of proportion of increase—Calculation of proportion—Finance Act*, 1912 (2 *& 3 Geo. 5, c. 8*), *s.* 2.—By section 2 of the Finance Act, 1912, where licensed premises that are not "tied" are held under a lease made before the passing of the Finance (1909-19) Act, 1910, the lessee may recover from the grantor so much of any increase of licence duty under that Act as is proportionate to any increased rent or premium payable in respect of the premises being let as licensed premises.

Held, that in ascertaining any increased rent payable in respect of the premises being let as licensed premises, the court must consider the difference between the rent reserved by the lease and the rent which the premises would command as they stood if the licence were taken away, and not the rent the premises would command if a reasonable sum were spent in adapting them for some purpose other than that of licensed premises—*e.g.*, as a shop.—PROCTER *v.* TARRY, *K.B.D.*, 287 ; 1914, 2 K. B. 178.

2. *Licence duty — "Licensed premises held under lease" — Liability of lessor to pay proportion of increase of duty—Finance* (1909-10) *Act*, 1910, *ss.* 43, 46—*Finance Act*, 1912, *s.* 2.—Section 2 of the Finance Act, 1912, provides that "where the licensed premises are held under a lease," which does not contain any covenant by the lessee to obtain intoxicating liquor from the lessor, the lessee shall be entitled to recover from the lessor a proportion of any increase of the duty payable in respect of the licence payable under the Finance (1909-10) Act, 1910.

Held, that the plaintiffs, who were brewers, could not claim proportion of the increase of duty payable in respect of the licence of a public-house from the freeholder, as the lessee "holding" under a lease made before the passing of the Finance (1909-10) Act, 1910, referred to in section 2 of the amending Act of 1912, is only the lessee actually holding the licence.—WATNEY, COMBE, REID & Co. *v.* BERNERS, *C.A.*, 593.

LIEN :—

Motor-car—Detained for charges under an agreement—Repair and maintain and supply chauffeur—Improvements necessary for lien—Different liens discussed.—There is no lien at common law on a motor-car for moneys due under an agreement to repair, maintain and keep in order a motor-car and to supply a chauffeur to drive it, unless the car is improved by the person claiming the lien.

The principle of *Scarfe* v. *Morgan* (1838, 4 M. & W. 270) applied.—HATTON v. CAR MAINTENANCE Co., *Sargant, J.*, 361.

LIGHT :—

Right to—Interference with—Easement—Effect of acquiescence in a previous interference by other persons—Abandonment.—Where A, having an easement of light, consents to B partially obstructing such light, he does not thereby abandon his right to the easement of light, and he does not lose his right to sue C for damages for further obstructing such light, although, until 20 years have elapsed from the time of B's obstruction, A can claim no greater right over C's land than he could have claimed previously to B's alterations.

Staight v. *Burn* (1869, L. R. 5 Ch. 163) followed.—BAILEY & SON v. HOLBORN AND FRASCATI, *Sargant, J.*, 321 ; 1914, 1 Ch. 598.

LIMITATIONS, STATUTE OF :—

1. *Executor—Leaseholds—Distribution of assets—Liability of Leases—Administration action—Devastavit—Trustee Act*, 1888, *ss.* 1 (3), 8 (1) (*b*).—Executors who have distributed the assets of their testator among the beneficiaries, without setting aside any fund to meet contingent liabilities, including liabilities arising on leaseholds, are entitled to plead the Trustee Act, 1888, s. 8 (1) (b), as a defence to any claim made against them by a creditor more than six years after the distribution of assets, and that, whether the claim be made in a common action for money had and received or in an action to administer the estate of the deceased.

Decision of Warrington, J., reversed.

Dictum of Fletcher Moulton, L.J., in *Lacons* v. *Warmoll* (1907, 2 K. B. 350, 364) approved.

Per Phillimore, L.J., dissenting.—Time does not begin to run against a creditor until he can sue, and as in this case the liability did not arise until 1909, the action was not barred by lapse of time.—RE BLOW, *C.A.*, 136 ; 1914, 1 Ch. 233.

2. *Lease of minerals—Severance of reversion—Apportionment of rent—Payment to one reversioner—Real Property Limitation Act*, 1833 (3 *& 4 Will. 4, c.* 27), *s.* 9.—Where a lease is granted, and a severance of the reversion afterwards takes place, without the rent being apportioned, or notice of the severance being given to the lessee, payment of the whole rent to one reversioner is not a payment to a person wrongfully claiming it within section 9 of the Real Property Limitation Act, 1833, so as to bar the claim of the other reversioner.—MITCHELL *v.* MOSLEY, *C.A.*, 118 ; 1914, 1 Ch. 438.

LOCAL GOVERNMENT :—

1. *Borough becoming a quarter sessions borough—Adjustment of financial relations—Redemption of contributions theretofore paid to the county—Basis of redemption—Local Government Act*, 1888 *ss.* 33 (3*b*), 62 (2).—A county borough, which was not a quarte, sessions borough, had been ordered to pay to the county the annual sum of £337 6s. 11d. in respect of its share of the costs incurred by the county of and incidental to quarter sessions, petty sessions, and coroners, which costs, in fact, exceeded the sum it was ordered to pay. On a grant of quarter sessions being made to the borough, an arbitration was held to determine the amount for which the annual payment should be redeemed. The borough council tendered evidence that the expenses actually incurred by the county exceeded the annual sum. The arbitrator left two questions for the opinion of the court—(1) Whether this evidence ought to have been (as it was) received and considered by him ; (2) if not, whether the said annual sum ought to be redeemed at its present value as a perpetual annuity, or on what other basis or principle the terms of redemption ought to be settled ; and he said that if the evidence had rightly been admitted by him, then he found that the annual payment should be redeemed for a nominal sum of 20s. ; if he ought to have excluded it, then the capital redemption should be £10,379 17s. 5d.

Held, that the arbitrator was *functus officio*, and that the court had only jurisdiction to say whether the arbitrator was right or wrong in admitting the evidence ; on that being decided the award was complete, and the amount found on that basis could not be interfered with. Further, that the arbitrator was right in admitting the evidence.

Decision of Bailhache, J. (reported 1913, 1 K. B. 93, 11 L. G. R. 125, 82 L. J. K. B. 308), varied.—NORTH RIDING COUNTY COUNCIL *v.* MIDDLESBROUGH BOROUGH COUNCIL, *C.A.*, 431 ; 1914, 2 K. B. 847.

2. *Obstructive building—Pulling down—Unhealthy dwelling-houses—Workshop—Housing of the Working Classes Act*, 1890 (53 *& 54 Vict. c.* 70), *ss.* 38, 41—*Housing, Town Planning, &c., Act*, 1909 (9 *Ed. 7, c.* 44), *ss.* 28, 46.—The 38th section of the Housing of the Working Classes Act, 1890, is not limited to dwelling-houses, but applies to buildings of every description. A workshop,

therefore, may under the section be ordered to be pulled down by the local authority.—JACKSON *v.* KNUTSFORD URBAN COUNCIL, *Eve, J.*, 756.

3. *Private street works—Notice to make-up road—Service on owner of several houses in same road—Failure to comply with notice—Execution of work by public authority—Failure of owner to pay apportioned part of expenses—Charge on the premises of owner—Whether on whole premises or on each of several premises—Public Health Act*, 1875 (38 & 39 *Vict. c.* 55), *ss.* 150, 257.—A local authority having given notice to an owner of several premises in a road to make up the road, and the owner having failed to comply with the notice, and the local authority having then executed the work itself and the owner having failed to pay the apportioned sum due from him in respect of his premises, the local authority asked the court to declare that it was entitled to a charge on the whole of the premises of the owner in that road to secure the payment of the expenses incurred in respect of each of his premises.

Held, that the local authority was entitled to a charge on the several premises respectively to secure the payment of the expenses incurred in respect of each of the premises, but was not entitled to a general charge on all the premises.—CROYDON RURAL DISTRICT COUNCIL *v.* BETTS, *Warrington, J.*, 556; 1914, 1 Ch. 870.

4. *Public swimming baths—Closed for winter months—Use of for "healthful recreation or exercise"—Kinema entertainments—Baths and Washhouses Acts*, 1846 *to* 1899.—By section 5 of the Baths and Washhouses Act, 1878, it is provided that a local authority may close a public swimming bath during the winter months, and may allow it to be used for such purposes of healthful recreation or exercise as they may think it. The defendant corporation let their baths for the purpose of being used as a kinematograph theatre.

Held, that the letting was for the purpose of "healthful recreation" within the meaning of the Act.—ATTORNEY-GENERAL *v.* SHOREDITCH CORPORATION, *Eve, J.*, 415.

5. *Streets—Fencing vacant land adjoining street—Land used to inconvenience or annoyance of public—Jurisdiction of council and justices under local Act—Willesden Urban District Council Act*, 1903 (3 *Ed.* 7, *c. clxxxi.*), *s.* 32.—A local Act provided that "if any land . . . adjoining any street is allowed to remain unfenced or the fences thereof are allowed to be or remain out of repair, and such land is in the opinion of the council, owing to the absence or inadequate repair of any such fence, a source of danger to passengers, or is used for any immoral or indecent purpose, or for any purpose causing inconvenience or annoyance to the public, then . . . after . . . notice . . . to the owner or occupier . . . the council may cause the same to be fenced . . . and the expenses thereby incurred may be recovered from such owner or occupier summarily as a civil debt."

An owner of vacant land adjoining a street in the district had surrounded it with a post and rail, the posts being 8 feet apart and the rail 3 feet 8 inches from the ground. The council gave him notice under the above section that the land was not properly fenced, and owing to the absence of a proper fence was used for a purpose causing inconvenience or annoyance to the public, and requiring him forthwith properly to fence the land. On his non-compliance, the council put up a new "economic" fence about 6 inches higher than the rail and attached it to the existing posts, thus forming a close fence, and summoned the landowner for the cost of it.

Held, reversing the decision of the Divisional Court (29 T. L. R. 231, 11 L. G. R. 313, 77. J. P. 174) that the decision of the council was limited to lack of repair of the fence; that it was for the justices and not the council to determine whether the land was used for any purpose causing inconvenience to the public, and that being a question of fact, the case must go back for the justices to decide the fact.—UPJOHN *v.* WILLESDEN URBAN DISTRICT COUNCIL, *C.A.*, 81; 1914, 2 K. B. 85.

LONDON:—

Street—General line of buildings—Resolution of Metropolitan Board of Works adopting new line in advance of existing line—Absence of superintending architect's certificate—7 Geo. 4, *c. cxiii., s.* 140—*Metropolis Management Act*, 1862 (25 & 26 *Vict. c.* 102), *ss.* 75, 76—*London Building Act*, 1894 (57 & 58 *Vict. c. cxiii.*), *ss.* 22, 25, 27, 215, 216.—The Euston road was laid out in 1756 under an Act of that date, which enacted that no buildings should be erected on new foundations within 50 ft. of the highway. That Act was repealed by the Metropolis Management Act, 1862, which provided that no building should be erected beyond the general line of buildings if the distance of that line from the highway did not exceed 50 ft. Long before 1862 buildings had been erected on the forecourts of the then existing buildings and projected beyond the 50 ft. line. As to a certain section, C. to D. representing 380 yds. of the Euston road, the Metropolitan Board of Works in 1876, at the recommendation of their superintending architect (who, however, never gave a certificate defining it as the general line of buildings), and with the view of establishing a new and regular line of buildings 11 ft. from the roadway and up to the inner edge of the pavement, roughly coinciding with existing projections, passed a resolution enabling all persons interested to build up to that frontage without restriction as to height. This resolution had been extensively acted on. In 1909 the appellants proposed to re-erect a building on this 11 ft. line. The respondents objected, and their superintending architect certified that the general line in section C to D was the old 50 ft. line. The Tribunal of Appeal confirmed that certificate, but stated a case.

In the Divisional Court, Ridley and Lush, JJ., differed. Ridley, J., was for dismissing the building owner's appeal, Lush, J., for allowing it. The appeal was accordingly dismissed.

Held, that the general line of buildings between C and D was the 11 ft. line. That the resolution of the Board of Works of 1867 could not be disregarded, and after this lapse of time those who had accepted the invitation and built up to the 11 ft. line could not be treated as a nuisance. That each of them must be deemed to have had consent, and that the 11 ft. line was now the general building line of that portion of the road. In such circumstances section 27 of the London Building Act, 1894, had no application.

Scott v. *Carritt* (1900, 82 L. T. 67) and *Metropolitan Railway* v. *London County Council* (1911, A. C. 1, 8 L. G. R. 1055, 80 L. J. K. B. 35) distinguished.—CLODE *v.* LONDON COUNTY COUNCIL, *C.A.*, 633.

LUNATIC:—

1. *Committee—Sale of lunatic's estate tail—Power vested in lunatic for his own benefit—Resettlement of proceeds of sale—Jurisdiction of judge in lunacy—Lunacy Act*, 1890 (53 *Vict. c.* 5), *ss.* 120 (*a*) *and* (*l*), 123—*Lunacy Act*, 1891 (54 & 55 *Vict. c.* 65), *s.* 27.—The court may authorize the committee of a lunatic tenant in tail to disentail his estate, with the object of selling any of his property, under section 120 (l) of the Lunacy Act, 1890, the right to bar an estate tail conferred by the Fines and Recoveries Act 1833, being a "power vested in the lunatic for his own benefit."; The order for sale may be made by a master, but the proceeds of sale must be resettled by the judge, so as not to alter the devolution of the property after the lunatic's death.—RE E. D. S. (A PERSON OF UNSOUND MIND), *C.A.*, 338; 1914, 1 Ch. 618.

2. *Practice—Lunatic, not so found—Capacity—Settled account—Expert witness—Function of the court.*—Where a lady alleged to be of unsound mind brought an action by her next friend for an account against her trustee, who had managed her property, and her trustee, in defending the action, denied that she was of unsound mind, and pleaded settled account, and the medical evidence as to her state of mind was conflicting,

Held, that it is the function of the court in such a case to form an independent opinion with regard to the technical aspect.—RICHMOND *v.* RICHMOND, *Neville, J.*, 784.

MAINTENANCE OF SUIT:—

Common interest—Trade union—Slander on officers of the association—Indemnity by the association.—A member of a trade union made a number of public speeches making charges against officers of the association in their conduct of the association. These speeches were extremely harmful to the association.

Held, that the association had no legal right to maintain an officer of the association in an action for slander against the person making the allegations.—ORAM *v.* HUTT, *C.A.*, 80; 1914, 1 Ch. 98.

MARRIED WOMAN:—

Bequest of annuity for separate use without power of anticipation—Right to disclaim—Married Woman's Property Act, 1882 (45 & 46 *Vict. c* 75), *s.* 1.—A married woman, being entitled to an annuity under a will for her separate use without power of anticipation, agreed with the residuary legatees to disclaim the bequest on condition that they paid her a sum of money.

Held, that the married woman was entitled to disclaim the bequest.—RE WIMPERIS, *Warrington, J.*, 304; 1914, 1 Ch. 502.

MINES:—

Minimum wage—Method of ascertaining actual daily earnings of workmen—Power of joint district board to make regulation "with respect to regularity and efficiency of the work"—Invalidity of rule as to calculating "minimum wage" pay—Coal Mines (Mini-

mum Wages) Act, 1912 (2 *Geo.* 5, *c.* 2) *s.* 1 (2).—By the Coal Mines (Minimum Wage) Act, 1912, s. 1 (2), "the rules authorized to be made by a Joint District Board shall lay down conditions . . . with respect to the regularity and efficiency of the work to be performed by the workmen." A Joint District Board appointed under the Act to make rules for the collieries in South Wales, including Monmouthshire, of which Lord St. Aldwyn was chairman, made a rule that "in ascertaining whether the minimum wage had been earned by any workmen on piece-work, the total earnings during two consecutive weeks shall be divided by th number of shifts he has worked during such two weeks."

Held, that such rule was *ultra vires* and void.

Per Vaughan Williams, L.J., the question how the minimum wage should be calculated must be decided either in an action raising that question for the decision of the court, or by an agreement between the workmen and mine-owners in a district, or by arbitration.

The same Joint Board made another rule, "that if a workman, from circumstances over which he had no control, was unable to perform sufficient work to earn a minimum wage, he must at once give notice of that fact to the official in charge of the district, and in default of such notice should forfeit his right to a minimum wage for that pay."

Held, that the rule being with respect to the regularity and efficiency of the work to be performed by the workmen, was *intra vires*.

Decision of Pickford, J. (1913, 3 K. B. 222, 29 T. L. R. 612), affirmed on both points.—DAVIES *v.* GLAMORGAN COAL CO., *C.A.*, 184; 1914, 1 K. B. 674.

See also Justices, Limitations, Revenue.

MISTAKE:—

Payment of money—Mistake of fact—Payment under protest—Liability.—To recover money paid under a mistake of fact there must have been a mistake owing to the supposed liability, and to recover money paid under protest there must have been an involuntary payment to avoid some immediate inconvenience, and notice given that the payer was not intending to give up his right. —MASKELL *v.* HORNER, *K.B.D.*, 381.

MONEY-LENDER:—

Security—Bill not in money-lender's registered name—Validity of—Money-lenders Act, 1900 (63 & 64 *Vict. c.* 51), *s.* 2 (1) (*b*) (*c*).—A loan made by a money-lender on the security of a bill of exchange drawn by the borrower to his own order, accepted by the drawee, and endorsed generally, is not void under section 2 (1) (*b*) and (*c*) of the Money-lenders Act, 1900, because it does not bear the plaintiff's name.—SHAFFER *v.* SHEFFIELD, *K.B.D.*, 363; 1914, 2 K. B. 1.

MORTGAGE:—

1. *Assignment—Sub-mortgage—Collateral security—Fraud of mortgagor's solicitor—Assignees taking subject to equities subsisting at date of assignment—Duty of assignees to make inquiries of mortgagor—Estoppel—Redemption.*—A purchaser of land arranged with his solicitor to obtain an advance of £4,000 to complete his purchase. The latter agreed to advance the sum upon a mortgage of the premises, and a transfer of £3,000 debenture stock as collateral security, and, representing that he was obtaining the money from a bank upon the same security, induced his client to execute a document addressed to the bank, authorizing them to hold the debenture stock as security for any advances they might make to the solicitor. The solicitor later sub-mortgaged the land mortgaged to him to the bank, and became bankrupt. The bank gave notice to, but made no inquiries of, the mortgagor at the time of the sub-mortgage.

Held, that the title of the bank was subject to all equities subsisting between the mortgagor and his solicitor at the date of the sub-mortgage, and that the mortgagor was entitled to redeem the land upon payment of the difference between £4,000 and the value of the debenture stock.—DE LISLE *v.* UNION BANK OF SCOTLAND, *C.A.*, 81; 1914, 1 Ch. 22.

2. *Clog on equity—Floating charge to secure advance—Option to purchase all sheep skins for five years—Collateral bargain—Principal money paid off after one year—Enforcement of option for residue of period—Whether doctrine against clogging equity of redemption applies to floating charge.*—The appellants advanced the respondents £10,000 under an agreement dated the 24th of August, 1910, the repayment of which sum was not to be demanded if the interest was duly paid for five years from that date, but the respondents were at liberty to pay off the loan earlier. As a security, the appellants took a floating charge over the respondents' property, the respondents not to create any mortgage or charge in priority without the appellants' consent. The appellants also bargained by clause 8 of the agreement that the respondents were not for five years from the date of the agreement to sell sheep skins obtained by them in their business to anyone but themselves. The respondents having, after 18 months, paid off the loan in full, refused to sell to the appellants sheep skins, alleging that the option the appellants had had ceased with the payment off of the loan or was unenforceable, as being a clog on the equity of redemption.

Held, that the option was a collateral bargain and enforceable by the appellants.

Decision of Court of Appeal (29 T. L. R. 464) reversed.—KREGLINGER *v.* NEW PATAGONIA STORAGE CO., *H.L.*, 97; 1914, A. C. 25.

3. *Priority—Merger—Reconveyance and new mortgage without notice of intermediate charge—Constructive notice—Yorkshire Registries Act*, 1884 (47 & 48 *Vict. c.* 54)—*Yorkshire Registries Amendment Act*, 1885 (48 & 49 *Vict. c.* 26).—In 1900, one Ogden mortgaged a freehold property in Yorkshire to Ackroyd, and in 1901 he gave the plantiff Manks a collateral charge on the property. In 1905 Ogden gave Ackroyd a further charge. In 1907 Ogden agreed to sell the property to Mrs. Whiteley, who obtained the money to pay off the first mortgage from Farrar, and herself supplied the money to pay off Ackroyd's further charge. The transaction was carried out by three deeds—namely, a reconveyance by Ackroyd to Ogden freed from Ackroyd's mortgage and further charge, a conveyance by Ogden to Whiteley, and a mortgage by Whiteley to Farrar. Ogden suppressed from Farrar and Whiteley the existence of Manks' charge.

Held, that Ackroyd's mortgage and further charge did not merge, and were kept alive for the benefit of Farrar and Whiteley, and the plaintiff, therefore, did not obtain priority.

Decision of Court of Appeal, *sub nom. Manks* v. *Whiteley* (Moulton, L.J., dissenting) (1912, 1 Ch. 735, 81 L. J. Ch. 457) reversed, and decision of Parker, J. (1911, 2 Ch. 448, 80 L. J. Ch. 696), restored.

Law of merger considered.

Toulmin v. *Steere* (3 Mer. 210) discussed.—WHITELEY *v.* DELANEY, *H.L.*, 218; 1914, A. C. 132.

See also Company, Set-off, Solicitor.

NATIONAL INSURANCE:—

Jurisdiction of county court—Sick benefit—Medical certificate —Suffering from debility and unable to work—No statement of disease.—An approved society's rules provided that "an illness shall not be deemed to commence or continue unless the member is rendered incapable of work by some specific disease or mental or bodily disablement, and that a person claiming sick benefit is to send notice of illness to the local secretary, accompanied by a medical certificate or other sufficient evidence of incapacity and the cause thereof, and that disputes were to be decided by the general delegates' meeting.

Held, that the county court had no jurisdiction to decide whether the society was right in refusing to pay sickness benefit to a member whose medical certificate only stated that she was "suffering from debility and unable to work."—BAILEY *v.* CO-OPERATIVE WHOLESALE SOCIETY (LIMITED), *K.B.D.*, 304; 1914, 2 K. B. 233.

NUISANCE:—

1. *Action by reversioners alone—Injury to the reversion—Occupier —Tenant added by amendment as co-plaintiff—R.S.C., ord.* 16, *rr.* 2 *and* 11.—A nuisance of noise and smell from a garage is not a "permanent" injury to the reversion within the definition given by Parker, J., in *Jones* v. *Llanrwst Urban District Council* (1911, 1 Ch. 393), and accordingly an action brought by the reversioners alone is not maintainable.

Where the gist of the action was whether the house in question had been rendered unfit for habitation by the erection of the garage, as no new cause of action was sought to be substituted, an amendment on the usual terms as to costs was allowed in order to add a tenant as co-plaintiff.

Walcott v. *Lyons* (1885, 29 Ch. D. 584) distinguished.—WHITE *v.* LONDON GENERAL OMNIBUS CO., *Sargant, J.*, 339.

2. *Mains laid under statutory powers under street—Bursting of hydraulic main—Damage caused to electric cables.*—The plaintiffs and the defendants were the owners respectively of electric cables and hydraulic mains which had been laid under the same streets under statutory powers. The hydraulic main burst owing to subsidences of the soil, due to heavy traffic, and not to any negligence on the part of the defendants, and thereby caused damage to the plaintiffs' electric cables.

Held, that the defendants were liable, as they had for their own

profit brought into a road a dangerous thing, which by escaping caused a nuisance to the plaintiffs, and that in the absence of a statutory authorization of the nuisance, they were liable in damages, notwithstanding that they had not been guilty of any negligence.

Midwood v. *Manchester Corporation* (1905, 2 K. B. 597) followed.

Decision of Scrutton, J. (1913, 3 K. B. 442), affirmed.—CHARING-CROSS, &c., ELECTRICITY SUPPLY CO. *v.* LONDON HYDRAULIC POWER CO., *C.A.*, 577; 1914, 3 K. B. 442.

3. *Market garden—Manure heap—Flies—Nature of locality—Excessive collection of manure—Injunction.*—The occupiers of a dwelling-house adjoining a market garden, where intensive culture was practised, suffered physical inconvenience from the smell from and flies bred in a large heap of manure. The locality was one where market gardening was carried on; but the collection of manure in question was in excess of what might be expected in the locality.

Held, that the manure heap was a serious inconvenience and interference with the comfort of the occupiers of the dwelling-house according to notions prevalent among reasonable English men and women, and that it amounted to a nuisance in law.—BLAND *v.* YATES, *Warrington, J.*, 612.

4. *Obstruction to highway—Assembly of crowds—Theatre queue—Police regulation.*—The lessees of a theatre are liable to the occupiers of adjoining premises for any obstruction to access to such premises caused by the assembly in the street of a crowd of people waiting for admission to the theatre, before the doors are opened. Such an obstruction is an actionable nuisance, to be restrained by injunction, notwithstanding that the crowd is marshalled in a queue, and controlled by the police.

So held by Cozens-Hardy, M.R., and Swinfen Eady, L.J. (Phillimore, L.J., dissenting).

Decision of Joyce, J., affirmed.

Barber v. *Penley* (1893, 2 Ch. 447) followed.

Per Phillimore, L.J.—The crowd likely to be attracted by a public entertainment is a matter purely for police regulation and control, and if properly controlled should cause no nuisance.—LYONS & Co. *v.* GULLIVER, *C.A.*, 97; 1914, 1 Ch. 631.

PERPETUITY:—

Remoteness—Trust for sale "at the expiration of twenty-one years" from date of settlement—Commencement of term.—A settlor conveyed his real estate to trustees upon trust for twenty-one years from the date of the settlement, and "at the expiration of the twenty-one years" to sell the estate.

Held, that the trust was not void for remoteness, the period running from midnight before the date of the settlement, and the trust for sale arising simultaneously with the expiry of the twenty-one years.—ENGLISH *v.* CLIFF, *Warrington, J.*, 687.

See also Charity.

POWER.—See Appointment, Settlement.

PRACTICE:—

1. *Appeal from county court—Differences of opinion between judges on appeal—Withdrawal of judgment of junior judge.*—In an appeal from a county court there was a difference of opinion between the two judges, and the junior judge withdrew his judgment.

Held (*per* Bray, J.), that the junior judge had a discretion to withdraw his judgment, and where so exercised the judgment of the senior judge became that of the court.

Per Lush, J., that when a litigant has once obtained a judgment in any court that judgment ought to stand, unless the appellate court, unanimously, or by a majority, decided that the judgment of the court below was wrong.—POULTON *v.* MOORE, *K.B.D.*, 156.

2. *Application for judgment—Registered design—Infringement of copyright or patent—Proceedings for—Consent to order for injunction in chambers—Publicity of proceedings—Motion in court—Right to costs—Rules of the Supreme Court*, 1883, *ord.* 32, *r.* 6.—In actions for infringement of copyright, trade-mark, or patent, where the defendants admit liability, and consent to judgment on terms, the plaintiffs are entitled to move for judgment in open court, and to have their extra costs of such motion in open court over and above what would be the costs of a summons for judgment in chambers.

Gandy Belt Manufacturing Co. v. *Fleming, Birkley, & Goodall* (18 Rep. Pat. Cas. 276) and *Royal Warrant Holders' Association* v. *E. J. Kitson (Limited)* (26 Rep. Pat. Cas. 157) followed.

London Steam Dyeing Co. v. *Digby* (36 W. R. 497) and *Allen* v. *Oakey* (62 L. T. 724) not followed.—SMITH & JONES *v.* SERVICE, *Sargant, J.*, 687.

3. *Application for judgment under ord.* 14, *r.* 1—*Plaintiffs' affidavit—Necessary averments—Affidavit by clerk to plaintiffs—Rules of Supreme Court, ord.* 14, *r.* 1.—In an action on a specially indorsed writ the affidavit filed in support of an order for summary judgment under order 14 was made by a clerk in the plaintiffs' employ, who gave no grounds as to his means of knowledge of the matters he deposed to, except that "he was duly authorized by his employers to make this affidavit, and that it was within his own knowledge that the aforesaid debt was incurred and for the consideration above stated, and that such debt, to the best of his knowledge and belief, remained unpaid and unsatisfied."

Held, that the affidavit was a reasonable compliance with the conditions of ord. 14, r. 1, and therefore the appeal from an order of Rowlatt, J., in chambers, giving leave to sign judgment, must be dismissed.—PATHE FRERES CINEMA *v.* UNITED ELECTRIC THEATRES, *C.A.*, 797.

4. *Copies of documents for use of judge—Costs of, ought to be allowed on taxation.*—The costs of copies of all relevant parts of wills and other original documents for the use of the judge must be allowed on taxation. The court ought not to be expected to use the original documents.—RE PARRATT, *Astbury, J.*, 580.

5. *Discovery—Interrogatories—Matters not directly in issue—Facts relevant to support of plaintiffs' case.*—In an action for infringement of a patent, the plaintiffs are entitled to interrogate the defendants whether articles alleged to be infringements were manufactured by, or were purchased from, a certain firm, or by or from what other persons or firms. Interrogatories are not to be confined to matters which are directly in issue in the action.

Decision of Eve, J. (58 SOLICITORS' JOURNAL, 33), reversed.

Marriott v. *Chamberlain* (17 Q. B. D. 154) and *Nash* v. *Layton* (1911, 2 Ch. 76) applied.—OSRAM LAMP WORKS *v.* GABRIEL LAMP CO., *C.A.*, 535; 1914, 2 Ch. 129.

6. *Discovery—Professional privilege—Transcript of shorthand notes of proceedings in county court—Document prepared in anticipation of future litigation—Matters* publici juris.—A transcript of shorthand notes of evidence given in previous proceedings in another court, to which the defendant was a party, is a documentary record of matters *publici juris*, and therefore is not privileged from discovery, though it has been made at the instance and cost of the defendant, through his solicitor, in anticipation of future litigation, and in order to assist in the preparation of his case.

So held by Cozens-Hardy, M.R., and Buckley, L.J., Channell, J., dissenting.

Norton v. *Defries* (8 Q. B. D. 508), overruled.

Lyell v. *Kennedy* (27 Ch. D. 1) distinguished.—LAMBERT *v.* HOME, *C.A.*, 471; 1914, 3 K. B. 86.

7. *Enforcing judgment—"Difficulty in or about the execution or enforcement" of any judgment or order—Oral examination of debtor—R. S. C., ord.* 42, *rr.* 32, 33.—Held (Buckley, L.J., *dissentiente*), that a difficulty having arisen about the execution and enforcement of the injunction which had been granted, an order for the attendance and examination of the defendant might properly be made under ord. 42, r. 33, as the object of that rule was to make orders which had been made under rule 32 more efficacious.—STURGES *v.* COUNTESS OF WARWICK, *C.A.*, 196.

8. *Issue—Event—Costs—Rules of the Supreme Court*, 1883, *ord.* 65, *rr.* 1, 2.—By ord. 65, r. 1, where any action, cause, matter or issue is tried, with a jury, the costs shall follow the event unless the judge by whom such action, cause, matter or issue is tried, or the court, shall, for good cause, otherwise order. In an action by a shareholder claiming relief on the ground that he had been induced to take shares on the faith of an untrue prospectus, terms were come to with all the defendants, except the brokers, whose names appeared as brokers for the company on the prospectus, and who had put in a separate defence, and were separately represented at the trial. The case proceeded against the brokers, and the jury answered certain questions thus: (1) Did the defendant brokers authorize the issue of the prospectus?—No. (2) Did the prospectus contain untrue statements of material facts or material omission of facts?—Yes. (3) Did the defendant brokers believe the prospectus was true, and had they reasonable grounds for such belief?—Yes. (4) Did the plaintiff take his shares relying upon the truth of the prospectus?—Yes. The learned judge entered judgment for the defendants. The judgment as drawn up, so far as material, directed that, except as herein otherwise adjudged, the brokers should recover against the plaintiff their costs of defence to be taxed; and that on taxation the plaintiff should have his costs of the issues embodied in questions 2 and 4 above set out against the brokers. The brokers appealed against so much of the judgment as gave the plaintiff any costs against them.

Held, that the answers to questions 2 and 4 were not separate "issues," and the answers of the jury thereto were not "events" within the meaning of ord. 65, rr. 1 and 2, the facts suggested therein being merely a few links in the chain of alleged facts which, if all were proved, would have entitled the plaintiff to relief, and therefore the defendants were entitled to their costs.—HOWELL *v.* DERING, *C.A.*, 669.

9. *Joinder of causes of action—Claim by executor—Personal claim—Rules of the Supreme Court*, 1883, *ord.* 18, *rr.* 1, 5, 7, 8.—A plaintiff on a specially indorsed writ claimed in his personal capacity £4 10s. as arrears of rent, and for the forfeiture of certain premises, and as executor he claimed £9 as arrears of rent due to his testator's estate in respect of the same premises.

Held, there had been a misjoinder of causes of action by reason of ord. 18, r. 5, and that the plaintiff must elect which cause of action he would proceed with; otherwise the proceedings in the action to be stayed.

Decision of Astbury, J., reversed.—LORD TREDEGAR *v.* ROBERTS, *C.A.*, 118; 1914, 1 K. B. 283.

10. *Parties—One person suing for other persons having the same interest—Joint contract—Rules of the Supreme Court*, 1883, *ord.* 16, *r.* 9.—By ord. 16, r. 9, of the Rules of the Supreme Court, 1883, it is provided that "where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorized by the court or a judge to defend in such cause or matter, on behalf or for the benefit of all persons so interested."

Held, that under the rule one joint-contractor may sue in a representative capacity on behalf of himself and the other joint-contractors they being persons having a common interest.—JANSON *v.* PROPERTY INSURANCE CO., *K.B.D.*, 84.

11. *Service—Foreign corporation—Service of writ within the jurisdiction—Agent to receive orders—Carrying on business—R.S.C., ord.* 9, *r.* 8.—A foreign corporation employed an agent in this country to receive orders, but he had no general authority to make contracts, and was a mere intermediary.

Held, that the foreign corporation were not carrying on business in this country, and that such agent was not a "head officer" upon whom a writ issued against the corporation could be properly served.

Grant v. *Anderson* (1892, 1 Q. B. 108) followed.—OKURA & CO. *v.* FOSBACKA JERNVERKS ACTIEBOLAG, *C.A.*, 232; 1914, 1 K. B. 715.

12. *Service out of the jurisdiction—Foreign firm not carrying on business within jurisdiction—Firm sued in the firm name—Partners not parties—Status of firm to be determined by* lex fori *and not by* lex domicilii—*R.S.C., ord.* 48*a*, *r.* 1.—There is no jurisdiction to sue under its firm name a foreign firm not carrying on business in England, even though the law of the foreign country in which it carries on business treats a firm as a separate entity capable of being sued as such, apart from its individual members. The capacity for being sued must be determined by the *lex fori*.

Dobson v. *Feste Rasini & Co.* (1891, 2 Q. B. 92) applied.—VON HELLFELD *v.* RECHNITZER, *C.A.*, 414; 1914, 1 Ch. 748.

13. *Striking out defence—Inconsistent pleas—Payment into court admitting liability—Payment into court denying liability—R.S.C., ord.* 22, *r.* 1.—A defendant, having by one paragraph of his defence paid money into court admitting liability, and by another paragraph of his defence paid money into court denying liability, and the plaintiff in the action making more than a single claim.

Held, that one of the paragraphs must be struck out, and that the defence must specifically state with regard to which claim of the plaintiff the money was paid into court.—CHAPMAN *v.* WESTERBY, *Warrington, J.*, 340.

14. *Striking out pleadings—Action by lunatic not so found by next friend—Issue of sanity of plaintiff raised by defence—Rules of the Supreme Court*, 1883, *ord.* 25, *r.* 4.—An action being brought by a person of unsound mind, not so found by inquisition, by her next friend, to recover documents in the hands of the defendants and the defendants by their defence alleging that the plaintiff was not of unsound mind, and that they held the documents on her behalf.

Held, that the issue of the sanity of the plaintiff, or the authority of her representatives, could not be raised on the pleadings.—RICHMOND *v.* BRANSON, *Warrington, J.*, 455; 1914, 1 Ch. 968.

See also Appeal, Costs, County Court.

PRINCIPAL AND AGENT:—

Del credere *agent—Dispute between buyer and seller—Extent of agent's liability.*—Where there is an ascertained amount due from the buyer to the seller and the buyer fails to pay the seller, the obligation of a *del credere* agent does not extend so far as to render him liable to litigate disputes between the buyer and the seller.—GABRIEL & SONS *v.* CHURCHILL, *C.A.*, 740; 1914, 1 K. B. 449.

PRIVILEGE:—

Ambassador—Foreign legation—Secretary—Subordinate officer—Diplomatic privilege—Waiver—Diplomatic Privileges Act, 1708 (2 *Anne*, *c.* 12).—One of the secretaries of the Peruvian Legation, who was a respondent to a misfeasance summons, entered an appearance to the summons and swore an affidavit on the merits in which, although stating his official position, he raised no objection to the jurisdiction. On the preliminary objection of privilege being insisted on at the trial,

Held, (1) that both under the Diplomatic Privileges Act, 1708, and at common law, writs against foreign public ministers were absolutely null and void; (2) that in order to establish a waiver by the diplomat of his privilege, the *onus* is on the person alleging such waiver to prove that the diplomat, who is a foreign subject, had at least implied knowledge of the rights alleged to be waived, and that he intended that they should be waived.

Quaere, whether a subordinate secretary at a Legation can in any circumstances waive the diplomatic privilege without the sanction of his Legation.

Taylor v. *Best* (1854, 14 C. B. 487) distinguished and explained.—RE REPUBLIC OF BOLIVIA EXPLORATION SYNDICATE, *Astbury J.*, 173; 1914, 1 Ch. 139.

PROBATE:—

1. *No will forthcoming—Grant of letters of administration to widow of deceased—Sale of land by administratrix—Subsequent discovery of a will and grant of probate to executors—Title of purchaser from administratrix—Land Transfer Act*, 1897 (60 & 61 *Vict. c.* 65), *ss.* 1, 2, 24—*Court of Probate Act*, 1857 (20 & 21 *Vict. c.* 77).—A grant of letters of administration to the estate of a deceased person is a judicial act, and vests the property of the deceased in the administrator as legal personal representative with all the powers conferred by the Land Transfer Act, 1897.

Upon the death of an owner of land, in 1899, no will being found after diligent search, letters of administration were granted to his widow, who, in exercise of her powers as legal personal representative, sold the land to a purchaser in 1902, retained one-third of the proceeds to be invested to provide for her dower, and distributed the residue among the co-heiresses. The widow died in 1911, and her husband's will was afterwards discovered, by which he had devised the said land to her for her life, and subject thereto to a cousin, not an heir, in fee. Probate having been granted to the executors, in an action by them to recover the land from the purchaser,

Held, that it vested in the widow on the grant of administration, and that the purchaser acquired a good title from her.

Decision of Astbury, J., reversed.

Graysbrook v. *Fox* (1565, 1 Plow. 275), *Abram* v. *Cunningham* (1677, 2 Lev. 182) and *Ellis* v. *Ellis* (1905, 1 Ch. 613), overruled.

Semble, death "intestate" means death without leaving a known will, or, at least, without having appointed a known executor competent to act.—HEWSON *v.* SHELLEY, *C.A.*, 397; 1914, 2 Ch. 13.

2. *Costs—Conduct of parties responsible for, and benefiting under, will the cause of litigation—Ord.* 65, *r.* 14*d*—*Power of court—Costs of all parties ordered to come out of legacies of successful parties.*—The principle of law is well established that the vigilance and suspicion of the court is excited by the preparation and obtaining of a will by a party who benefits therefrom, and that such a document ought not to be pronounced for unless the suspicion is removed, and that if, after inquiry, the court is satisfied that the document propounded does express the will of the deceased, those who were instrumental in bringing about the inquiry are not wholly in the wrong, even if unsuccessful in the litigation. Under ord. 65, r. 14d, the court has power to order that the costs shall not follow the event, but that the costs of all parties shall come out of that portion of the estate bequeathed by the will to the persons whose conduct has caused the inquiry, although they are successful in the litigation.—IN THE ESTATE OF OSMENT, *P.D.*, 596; 1914, P. 129.

3. *Costs—Supplemental probate of a codicil—Executors opposing probate—Improper plea of want of knowledge and approval—Codicil admitted to probate—Executors condemned in costs.*—In a probate action where the plaintiff and a defendant, daughters of the testator, were practically the only persons interested in the residue under his will and two codicils thereto, the plaintiff, being desired to do so by the executors, propounded a third codicil two years after probate of the will and earlier codicils had been obtained, and the executors in their defence pleaded that the codicil

was not duly executed and that the testator did not know and approve of the contents thereof. The codicil was admitted to probate, and the executors were condemned in costs.—IN THE GOODS OF SPEKE, *P.D.*, 99.

4. *Libellous passages in a will—Omitted from probate—Practice*—A will or codicil should not be made the vehicle whereby a person may publish libels after his death. When the words are embodied in a will and are clearly libellous and not testamentary, they will be omitted from the probate of the will and from the copies subsequently issued from the Probate Registry.—IN THE GOODS OF WHITE, *P.D.*, 534.

5. *Practice—Death of testator caused by felonious act of party claiming as legatee—Party struck out of suit—Manslaughter.*—No person may derive any benefit under the will of another whose death has been caused by the felonious act of that person, and there is no distinction in this respect between murder and manslaughter.

A, convicted of the manslaughter of B, had, prior to her conviction, been made a party to a probate suit, in which she claimed to be entitled to property under a will made by B. Held, that after conviction she was properly struck out of the suit.

Decision of Sir Samuel Evans, P., affirmed.

Cleaver v. *Mutual Reserve Fund Life Association* (1892, 1 Q. B. 147) applied.—RE HALL, HALL *v.* BAXTER, *C.A.*, 30; 1914, P. 1.

PUBLIC TRUSTEE.—See Trustee.

RAILWAY:—

Running powers over another line for general traffic—Railway junction by third company for limited traffic—Amalgamation of running company with junction railway—Effect of amalgamation—Railways Clauses Act, 1863, *Part V.*—The appellant company had general running powers over the M.S. and W. line of the respondent company. In 1906 the appellant company obtained an Act, incorporating Part V. of the Railways Clauses Act, 1863, for amalgamation with the Lancashire, Derbyshire and East Coast Railway. The line of the latter company crossed the M.S. and W. line at S., and in 1897 it had connected its own line with the said line of the respondent company at S. Junction, from which junction it obtained limited running powers to M. over the respondent company's said line. The appellants claimed that they were entitled to exercise their general running powers over the respondents' line, running on and off the same by means of the connection at S. Junction.

Held, that the amalgamation gave the appellant company no higher rights against a third party than those previously existing in either of the two companies separately; that the appellant company could not enlarge its general running powers over the line of the respondent company by making use of the limited running powers of the Lancashire, Derbyshire and East Coast Railway so as to gain access to the respondents' line for the exercise of its own general running powers.—GREAT CENTRAL RAILWAY *v.* MIDLAND RAILWAY, *H.L.*, 65; 1914, A. C. 1.

See also Contract, Rating.

RATING:—

1. *General rate under local Act—Partial exemption of land used as railway—Liverpool Corporation Act*, 1893, *s.* 36.—Held, that the expression, "land used as a railway," included not merely the land upon which the rails were laid, but also loading platforms and machinery, including cranes, which were necessarily used by the railway company as adjuncts to their undertaking.—LANCASHIRE AND YORKSHIRE RAILWAY CO. *v.* LIVERPOOL CORPORATION, *H.L.*, 653.

2. *London—Reduction of value of tramways through competition of motor omnibuses—Provisional list*—Mandamus *to assessment committee to appoint valuer—Valuation (Metropolis) Act*, 1869 (32 & 33 *Vict. c.* 67), *s.* 47.—A Divisional Court made absolute a rule *nisi* for *mandamus*, at the instance of the London County Council, directed to the Islington Assessment Committee under section 47 of the Valuation (Metropolis) Act, 1869, to appoint a valuer to make a provisional valuation list, shewing the reduction in the rateable value of the London County Council tramways in the borough of Islington, on the ground that, as the receipts had fallen owing to competition with motor omnibuses, the valuation of their undertaking to the rates, as made at the quinquennial assessment, was too high.

Held (Vaughan Williams, L.J., *dissentiente*), that it was a condition precedent to the making an order for the appointment of a valuer that there should be shewn either an increase or decrease in fact of the rateable value of the assessment, and that the falling off of receipts from competition with motor-buses was not sufficient *prima facie* evidence of a fall in the rateable value of the hereditaments as gave a right under section 47 of the Valuation of Property (Metropolis) Act, 1869, to require the appointment forthwith of a valuer. Accordingly the rule was discharged.

Decision of Divisional Court (30 T. L. R. 149) reversed.—REX *v.* ISLINGTON ASSESSMENT COMMITTEE, *C.A.*, 555.

3. *Metropolis — Poor rate — Flats — Valuation—Houses and buildings let out in separate tenements separately rated—Valuation (Metropolis) Act*, 1869 (32 & 33 *Vict. c.* 67), *s.* 52, *Schedule III.*—The respondents, a limited company, were the owners of buildings consisting of two blocks, divided into flats. The blocks were not, nor was either of them, separately valued in the valuation list. The flats were entered in the valuation list and valued as separate rateable hereditaments.

In calculating the rateable value of the flats the assessment committee made deductions from the gross value as directed by the Third Schedule of the Valuation (Metropolis) Act, 1869. The company contended that the blocks were houses or buildings let out in separate tenements within the meaning of the footnote to that schedule, and that the deductions specified in the schedule did not apply. Each tenant was an occupier having a separate and distinct occupation of his flat, the hall door of which opened on to a common staircase, and was entered in the valuation list as a rateable occupier. The owners were not entered as occupiers in the valuation or any list.

Held, that each block was "a house or building let out in separate tenements" within the meaning of the footnote to Schedule III. of the Act of 1869, notwithstanding that the flats were separate rateable hereditaments; and that the assessment committee were not bound by the maximum rate of deduction—one-sixth—prescribed in that schedule.

Decision of Court of Appeal (1913, 3 K. B. 230), following *Western* v. *Kensington Assessment Committee* (1908, 1 K. B. 811), affirmed.—ST. MARYLEBONE ASSESSMENT COMMITTEE *v.* CONSOLIDATED LONDON PROPERTIES, *H.L.*, 593.

4. *Poor rate in City of London—Precepts of London County Council—Land in area reclaimed from Thames—Poor rate—County rate education expenses—Equalisation charge—7 Geo.* 3, *c.* 37, *s.* 51—"*Free from all taxes and assessments whatsoever.*"—Held, that the exemption from "all taxes and assessments whatsoever," given by section 51 of 7 Geo. 3, c. 37 (by which statute certain lands reclaimed from the Thames became vested in the adjoining owners), exempted the owners or occupiers of premises now erected on such lands from the liability to poor rate or any part thereof.

Decision of Divisional Court (1913, 2 K. B. 281, 11 L. G. R. 554, 82 L. J. K. B. 928) reversed.—ASSOCIATED NEWSPAPERS (LIMITED) *v.* LONDON CORPORATION, *C.A.*, 318; 1914, 2 K. B. 603.

RESTRAINT OF TRADE:—

1. *Agreed damages for breach—Liquidated damages—Penalty.*—An agreement between the plaintiffs and defendant provided that the plaintiffs should sell their motor-cars to the defendant for sale by him in a certain district, the defendant undertaking not to sell any car or parts below a certain price, and to pay to the plaintiffs £250 for every breach of such undertaking, the sum fixed being expressed to be "the agreed damages which the manufacturer will sustain." The defendant sold five cars at a lower price than that fixed.

Held, that as different breaches of the agreement by the defendant might result in damages varying in amount, the sum of £250 was in the nature of a penalty, and not liquidated damages.—FORD MOTOR CO. *v.* ARMSTRONG, *K.B.D.*, 456.

2. *Argentine meat importers—Australian meat importers—"Any other trade or business similar" to plaintiff company's—Severance of covenant—Reasonableness—Area of restraint—Time during which restraint operative—Injunction.*—Where it is clear from the terms of a covenant in restraint of trade consisting of two parts that the parties themselves intended that such two parts should be severable, the fact of one part being invalid does not of itself invalidate the other part.

Dictum of Lord Moulton in *Mason* v. *Provident Clothing and Supply Co.* (1913, A. C. 724, at p. 749) not applicable to such a case as this.

Where the area of restraint is clearly unreasonable, the covenant cannot be saved merely because of its reasonableness as to time.

Ward v. *Byrne* (1839, 15 M. & W. 548) applied.—NEVANAS & CO. *v.* WALKER, *Sargant, J.*, 235; 1914, 1 Ch. 413.

3. *House agent—Carrying on business—Prohibited area—Dealing with properties within radius from office outside*—Interim *injunction.*—In partnership articles relating to a business of auctioneers, house agents, and valuers, the defendant covenanted not to engage in any business competing with that of the partner-

ship within a radius of one mile from the firm's business premises for a period of ten years from a dissolution. After a dissolution had taken place the defendant took an office just outside the mile radius, and proceeded to do business as a house agent with persons residing within it, and put up boards advertising houses to be let or sold within it, systematically.

Held, that the object of the clause was to prohibit the defendant from competing with the plaintiff as a house agent, and that what he did was a breach of that covenant.

Turner v. *Evans* (1853, 2 Ell. & Bl. 512, 2 De G. M. & G. 740) followed.—HADSLEY *v.* DAYER-SMITH, *H.L.*, 554.

4. *Unrestricted covenant—Service agreement—Medical profession—Assistant in pathological laboratory—Covenant restricted in area but unlimited as to time—Construction—Lifelong restraint unreasonable.*—By a contract made in 1906 a physician agreed to act as an assistant in a pathological laboratory, then a novel type of undertaking, and to be bound not to engage in similar work within a distance of ten miles from the plaintiff's laboratory.

Held, that the obligation not being expressed to last for a definite limited period, was imposed during the life of the covenantor.

Held, further (Swinfen Eady, L.J., dissenting), that such a restriction being greater than was necessary for the plaintiff's protection, was unreasonable, and ought not to be enforced.

Decision of Sargant, J., affirmed, but on different grounds.—EASTES *v.* RUSS, *C.A.*, 234; 1914, 1 Ch. 468.

REVENUE:—

1. *Agricultural land—Valuation—Shooting rights—Referee—Award—Finance* (1909-10) *Act*, 1910 (10 *Ed.* 7, *c.* 8), *s.* 26 (1).—Where land is valued for agricultural purposes under section 26 (1) of the Finance (1909-10) Act, 1910, the value of sporting rights should not be included.

When a referee has once issued his award, another cannot be issued without the consent of both parties.—INLAND REVENUE COMMISSIONERS *v.* HUNTER, *K.B.D.*, 490.

2. *Income tax—Application to amend assessment—Appeal—Power to state case—Income Tax Act*, 1842 (5 & 6 *Vict. c.* 35), *s.* 134—*Taxes Management Act*, 1880 (43 & 44 *Vict. c.* 19), *s.* 59.—An application to the Income Tax Commissioners to amend an assessment under the Income Tax Act, 1842, s. 134, on the ground of loss of profits during the year of assessment is not an "appeal" against the assessment, so as to entitle the Commissioners to state a case for the opinion of the High Court under the Taxes Management Act, 1880, s. 59.—FUETADO *v.* CITY OF LONDON BREWERY CO., *C.A.*, 270; 1914, 1 K. B. 179.

3. *Income tax—Company registered in England—Business carried on entirely in Egypt—Control vested in Egyptian board of directors—Profits remitted to England—Income Tax Act*, 1853, *s.* 2, *Schedule D.*—A company registered in the United Kingdom owned and managed two hotels in Egypt, and had no other property or business. By new articles of association, made in 1908, the company delegated the entire control and management of its business to a board of directors in Egypt. The London board kept accounts and declared dividends of the profits made in Egypt.

Held, that the company did not carry on business within the United Kingdom, and therefore was only accountable for income tax in respect of profits actually remitted to England.—EGYPTIAN HOTELS *v.* MITCHELL, *C.A.*, 494; 1914, 3 K. B. 118.

4. *Income tax—Deduction from interest—Debt due from frontager for making up roads—Income Tax Act*, 1853, *s.* 40.—Some years ago a highway authority claimed from the defendant a sum due from him as frontager for making up of certain roads. The amount was not disputed, but the money was not paid. Subsequently a fresh claim was made for payment with interest at the statutory rate of 5 per cent. The defendant claimed to deduct income tax from the interest.

Held, that the capital sum due from a frontager was a simple debt, enforceable at any time, and income tax in respect of the statutory interest payable on it, if time were given, could not be deducted by him under section 40 of the Income Tax Act, 1853.—GATESHEAD CORPORATION *v.* LUMSDEN, *C.A.*, 453; 1914, 2 K. B. 883.

5. *Income tax—Inhabited house duty—Distress—Instruments of trade—Wrongful distress—Excessive distress.*—The collector of taxes in levying a distraint for unpaid income tax and inhabited house duty can seize goods on the premises charged which do not belong to the occupier.

There is no exemption from such a distress in favour of instruments of trade.

A claim for wrongful distress does not include one for excessive distress.—MCGREGOR *v.* CLAMP, *K.B.D.*, 139; 1914, 1 K. B. 288.

6. *Increment value duty—Gross value—Sale of fee simple—"Open market"—"Willing seller"—Property specially valuable to a particular purchaser—Finance* (1909-10) *Act*, 1910 (10 *Ed.* 7, *c.* 8), *s.* 25 (1).—The original gross value of the fee simple of a house and garden in a town was fixed on a provisional valuation at £750, but shortly before the valuation the property was sold for £1,000 to the trustees of a nurses' home established in adjoining premises, who urgently needed it in order to extend their accommodation. The vendor, who was then in occupation, had previously refused an offer of £850, but the purchasers were prepared to pay as much as £1,000, if necessary, to obtain the property. The parties appealed to a referee, who fixed the gross value at £1,000.

Held, on appeal, that the referee was right in fixing £1,000 as the amount the property might be expected to realise if sold at the time in the open market by a willing seller in its then condition and that all the surrounding circumstances ought to be taken into consideration.—INLAND REVENUE COMMISSIONERS *v.* CLAY, *C.A.*, 610; 1914, 1 K. B. 339.

7. *Increment value duty—Sale of fee simple—Finance* (1909-10) *Act*, 1910 (10 *Ed.* 7, *c.* 8), *ss.* 1, 2, 25.—In 1910 the appellant Lumsden sold the fee simple of a house, subject to tithe of the capital value of £33, for £750. At the time of the sale the "gross value"—that is, the amount which the fee simple of the property, if sold in the open market by a willing seller in its then condition, free from any charge or burden, might have been expected to realise—was £658. At the date of the sale the "full site value" was admitted to be £228, and the original "assessable site value" £105. A reduction of £90 was allowable for capital road expenses.

An assessment of £25 gross increment value duty under sections 1 and 2 of the Finance Act, 1910, upon a sum of £125 gross increment value was made upon the appellant.

Held, by the Court of Appeal (Cozens-Hardy, M.R., and Kennedy, L.J., Swinfen Eady, L.J., dissenting) that the proper method of calculating the increment value under the Act was to deduct £430, the difference between £228 full site value, and £658 gross value, and also the allowance of £90, from the purchase price of £750, leaving £230, or an excess of £125 over the original site value of £105, and that therefore increment value duty was payable on the sum of £125.

The House (Viscount Haldane, C., and Lord Shaw, Lords Moulton and Parmoor dissenting) being equally divided in opinion, following the practice in such a case to presume in favour of the negative, and affirm the judgment appealed from, ordered that the appeal should stand dismissed. No order as to costs.

Decision of Court of Appeal (1913, 3 K. B. 809, 82 L. J. K. B. 1275, 29 L. T. R. 759) accordingly affirmed.—LUMSDEN *v.* INLAND REVENUE COMMISSIONERS, *H.L.*, 738.

8. *Land value duties—"Site value"—"Divested of buildings . . . and structures . . . in connection with such buildings"—Ancient bank protecting fen land from inundation—"Building land"—Finance* (1909–10) *Act*, 1910 (10 *Ed.* 7, *c.* 8), *s.* 25 (2) *and* (4).—An embankment formed of earth and covered with turf, which protects farm lands lying below the level of high-water mark at spring tides from inundation by the sea, is not a "building" or "structure in connection with a building" within the Finance (1909–10) Act, 1910, s. 25 (2), and the land must not be treated as having been divested thereof for the purpose of arriving at its site value.

"Building land" means land which has a potential value for the purpose of erecting houses or other buildings on it, greater than its value for agricultural purposes.—WAITE *v.* INLAND REVENUE COMMISSIONERS, *C.A.*, 634.

9. *Land values—Duties—Agricultural land—Manures and tillages—Private road—Deductions—Finance* (1909–10) *Act*, 1910 (10 *Ed.* 7, *c.* 8), *s.* 25.—In valuing agricultural land let to a tenant, a referee under section 25 of the Finance (1909–10) Act, 1910, should include in the gross value and the total value any sums attributable to the value of unexhausted manures or tillages, and in arriving at the assessable site value such sums should not be deducted from the total value. In arriving at the full site value, the value of the grass growing on the land should be deducted from the gross value, but whether the value of a private road used in connection with buildings should be deducted is a question of fact, depending on whether the road is of such a size and permanence as to be a structure within section 25 (2). In arriving at the assessable site value, the value of grass laid down by the tenant for which he cannot claim compensation should not be deducted from the total value.—INLAND REVENUE COMMISSIONERS *v.* SMYTH, *K.B.D.*, 400.

10. *Mineral rights duty—Way-leaves—Way-leave over lessor's land—Minerals of outside owner—Finance* (1909–10) *Act*, 1910 (10 *Ed.* 7, *c.* 8), *ss.* 20, 24.—A duty is imposed on the rental value

of all rights to work minerals and of all mineral way-leaves by section 20 (1) of the Finance Act, 1910.

Held, that duty is payable in respect of way-leaves for minerals of owners outside the property of the person assessed.—STOREY *v.* INLAND REVENUE COMMISSIONERS, *K.B.D.*, 121.

11. *Reversion duty—Determination of lease—"Benefit accruing to the lessor"—Basis of ascertainment—Building agreement—Expenditure on building—Payment made in consideration of the lease—Finance* (1909-10) *Act*, 1910 (10 *Ed.* 7, c. 8), *s.* 13.—An intending lessee of house property, in pursuance of the terms of a building agreement, expended £6,000 in adding to, repairing, and improving the property. Leases were afterwards granted to him in express consideration of the agreed expenditure and of the rent and lessee's covenants. On the surrender of the leases and the assessment of the property to reversion duty,

Held, that in assessing the reversion duty the total value of the land at the time of the original grant of the lease was not to be ascertained solely by capitalizing the rent, but that the sum of £6,000 expended by the lessee was a payment "made in consideration of the lease" within the meaning of section 13 of the Finance (1909-10) Act, 1910, and must be taken into account.

Decision of Court of Appeal (58 SOLICITORS' JOURNAL, 219; 1914, 1 K. B. 641) affirmed.—INLAND REVENUE COMMISSIONERS *v.* CAMDEN, *H.L.*, 782.

12. *Reversion duty—Determination of lease—Total value of land—Licensed premises—Value of licence—Finance* (1909-10) *Act*, 1910 (10 *Ed.* 7, c. 8), *ss.* 13, 25, *sub-sections* 1, 3.—Held, affirming decision of the Court of Appeal (1913, 2 K. B. 593) that, in estimating the total value of land for the purpose of assessing the reversion duty payable under section 13 of the Finance Act, 1910, on the determination of a lease, the fact that the premises on the land are licensed for the sale of intoxicating liquor, and that the value of the land is thereby enhanced, is an element to be taken into consideration.—EARL FITZWILLIAM *v.* INLAND REVENUE COMMISSIONERS, *H.L.*, 493.

13. *Settled estate duty—Voluntary settlement reserving no benefit to settlor—Death of settlor within three years—"Property passing under a disposition on the death of the deceased"—Finance Act*, 1894 (57 & 58 *Vict.* c 30), *s.* 2, *sub-section* 1 (c); *s.* 5.—Where property is settled by a voluntary disposition not reserving a life or other interest to the settlor, it passes immediately under that disposition, and cannot be deemed to pass upon his death in the event of his dying within three years from the date of its execution; and, therefore, no settled estate duty under the Finance Act, 1894, is payable in respect thereof.

So held by the House (Lord Dunedin diss.), affirming an order of Court of Appeal (57 SOLICITORS' JOURNAL, 532; 1913, 2 K. B. 606, 82 L. J. K. B. 773), which reversed the judgment of Horridge, J. (1913, 1 K. B. 337), in favour of the Crown.—ATTORNEY-GENERAL *v.* MILNE, *H.L.*, 577.

14. *Stamp duty—Agreement for sale of business abroad—Book debts—"Property locally situate out of the United Kingdom"—Stamp Act*, 1891 (54 & 55 *Vict.* c. 39), *s.* 59, *sub-section* (1).—Upon the sale in England of a business carried on in Argentina and its assets,

Held, that so much of the consideration as represented the value of debts due from persons in Argentina to the vendor of the business was assessable to *ad valorem* conveyance duty under the Stamp Act, 1891, not being within the exemption in section 59, sub-section (1), in favour of "property locally situate out of the United Kingdom."—VELASQUEZ *v.* INLAND REVENUE COMMISSIONERS, *C.A.*, 554; 1914, 2 K. B. 404.

15. *Undeveloped land duty—Agricultural land—Lease before Act—Power to re-enter if required for building—Exemption—Finance* (1909-10) *Act*, 1910, *ss.* 16, 17 (5).—A lease of agricultural land valued at over £50 an acre contained a power enabling the landlord to resume possession if required for building or other purposes. The power was never exercised during the term.

Held, that the existence of the power did not bring the land within the proviso to section 17 (5) of the Finance Act 1910 so as to render it liable to undeveloped land duty.—SOUTHEND-ON-SEA ESTATES CO. *v.* INLAND REVENUE COMMISSIONERS, *C.A.*, 137; 1914, 1 K. B. 515.

16. *Undeveloped land duty—Person chargeable—"Owner"—"Person entitled in possession"—Finance* (1909-10) *Act*, 1910 (10 *Ed.* 7, c. 8), *ss.* 19, 41.—Where a vendor has contracted to sell land to a purchaser on the terms that the purchase money shall be paid by periodical instalments, and a conveyance executed upon payment of the last instalment, and the purchaser is in possession under the contract, having paid the instalments due, the purchaser, and not the vendor, is the "owner" within the meaning of the Finance (1909-10) Act, 1910, and is the person chargeable with any undeveloped land duty which may be assessed upon the site value of the property.—ALLEN *v.* INLAND REVENUE COMMISSIONERS, *C.A.*, 318; 1914, 2 K. B. 327.

RIVERS:—

1. *Prevention of pollution—Manufacturing and mining pollution—Persons against whom proceedings can be taken—Rivers Pollution Prevention Act*, 1876 (39 & 40 *Vict.* c. 75), *ss.* 3, 4, 5, 6 *and* 20—*Rivers Pollution Prevention Act*, 1893 (56 & 57 *Vict.* c. 31), *s.* 1.—The only persons against whom proceedings can be taken under section 4 of the Rivers Pollution Prevention Act, 1876, for causing to fall or flow, or knowingly permitting to fall or flow, or to be carried into any stream any polluting liquid proceeding from any factory or manufacturing process, are the persons whose factory or manufacturing process is producing the liquid.—WEST RIDING RIVERS BOARD *v.* LINDTHWAITE URBAN COUNCIL, *K.B.D.*, 434; 1914, 2 K. B. 13.

SALE OF GOODS:—

1. *Removal of crushed rock—Buyer prevented from fulfilling contract by failure of seller to do his part—Claim by buyer for damages.*—The plaintiff contracted with a mining company to remove waste rock then lying in the waste dump at the mine within a period of two years, provided it did not exceed 50,000 tons, the company to provide a crusher, and the rock so crushed to be put on rails and made available for sale. The crusher provided was capable only of crushing three tons per hour, and as the company never did anything to put it in a condition to do more, the work, owing to the incapacity of the crusher, had to be stopped. The plaintiff claimed damages.

Held, that as it appeared from the written contract that both parties had agreed that something should be done, which could not effectually be done unless both concurred in doing it, although there were not express words to that effect in the contract, it must be construed as meaning that each party had agreed to do all that was necessary to be done on his part for the carrying out of the work. The defendants had failed to provide an adequate crusher, and had therefore failed to carry out their part of the contract.

Mackay v. *Dick* (6 App. Cas. 251) followed.—KLEINERT *v.* ABOSSO GOLD MINING CO., *P.C.*, 45.

2. *Resale by buyers—Non-delivery by original seller—Rise in price—Damages for breach of contract—Measure of damage.*—In 1910 the respondents sold coal by contract to the appellants at 16s. 3d. a ton c. i. f. Genoa, to be shipped every two months, one cargo to be shipped in November, 1911. In October of that year, the appellants sold the expected cargo to one Ghiron at 19s. a ton c.i.f. Genoa. Two notes were sent to Ghiron, the first by the broker and the second by the appellants. The second note stipulated that the appellants were under no obligation to deliver coal unless they received a cargo from the respondents. In November, 1911, the respondents became afraid they would be unable to ship the cargo as promised, and they bought the same cargo from Ghiron and paid him for it. Default having been made by the respondents in shipping the November cargo, and the price of coal having at the immediate date risen to 23s. 6d. per ton, the appellants claimed to be entitled to recover from the respondents the difference at which they bought, 16s. 3d., and the market price, 23s. 6d.

The Court of Appeal (Hamilton, L.J., dissenting) held that the broker's note, and not the sale note, governed the contract, and that in the circumstances the appellants were entitled to recover from the respondents only the difference between 16s. 3d. and 19s. a ton. The appellants appealed.

The House, after consideration, allowed the appeal, and restored the judgment of Bailhache, J., who had held that the appellants were entitled, notwithstanding the sale to Ghiron, to recover from the respondents the difference between 16s. 3d. and 23s. 6d. per ton.—WILLIAMS BROTHERS *v.* E. T. AGIUS (LIMITED), *H.L.*, 377; 1914, A. C. 510.

SALE OF LAND:—

Depreciation of investments in court—Discharge of incumbrance—Proper person to bear the loss—Conveyancing and Law of Property Act, 1881 (44 & 45 *Vict.* c. 41), *s.* 5.—Certain mortgaged land was sold by order of the court freed from the mortgage, in accordance with the terms of sub-section 2, of section 5, of the Conveyancing Act, 1881 (44 & 45 Vict. c. 41), and a sum set aside in court to meet the mortgage. On a petition for payment out of this sum it was found to have become insufficient by reason of the depreciation of the Consols in which it had been invested, but the rest of the proceeds of sale were still in the hands of trustees.

Held, that the charge had merely become transferred to the purchase moneys, so as to make the proceeds of sale in the

trustees' hands available to make good the depreciation.—RE WILBERFORCE, *Sargant, J.*, 797.

SCHOOL.—See Charity, Education.

SETTLED LAND :—

1. *Expenditure of capital moneys—Authorized improvements—Operation incident to securing the benefit of works—Conversion of land into building land—Erection of estate office—Settled Land Act*, 1882 (45 & 46 *Vict. c.* 38), *s.* 25.—Where a settlement authorized the conversion of vacant land into building land, the court authorized the expenditure of the sum of £250 out of the capital moneys of the estate in the erection of a small estate office, not actually on the estate itself, but on a convenient site near the station, applying the maxim laid down in the case of *Re Mundy and Roper's Contract* (1899, 1 Ch. 275, at p. 289), that it is the duty of the court to construe the Settled Land Acts "in a spirit of wise and reasonable liberality," and holding that this expenditure could be brought within the words of section 25 of the Settled Land Act, 1882, as an "operation incident to or necessary or proper . . . for securing the full benefit of any of those works or purposes."—RE DE CRESPIGNY'S SETTLED ESTATES, *Astbury, J.*, 252 ; 1914, 1 Ch. 227.

2. *Lease—Licensed premises—Lease by tenant for life—Compensation levy—Covenant by lessee to pay rent without deduction—Invalid covenant—Best rent—Lease invalid as against remaindermen—Settled Land Act*, 1882 (45 & 46 *Vict. c.* 38), *s.* 5—*Licensing Act*, 1904 (4 *Ed.* 7, *c.* 23), *s.* 3 (3)—*Licensing Act*, 1910 (10 *Ed.* 7 *and* 1 *Geo.* 5, *c.* 24), *s.* 21 (3).—A tenant for life of licensed premises granted a lease of the premises to a brewery company for a term of years, the lessees covenanting to pay the rent reserved without any deduction in respect of payments to the compensation fund imposed under the Licensing Acts, 1904 and 1910, a proportion of which payment may, under section 3 (3) of the Licensing Act, 1904, and section 21 of the Licensing Act, 1910, be deducted from the rent, notwithstanding any agreement to the contrary.

Held, that the covenant to pay the rent without deduction being invalid, the lease, the inducement for which was the invalid covenant, was not a valid lease under the Settled Land Act so as to be binding upon the remaindermen.—PUMFORD *v.* BUTLER, *Joyce, J.*, 655.

3. *Limited owners with powers of tenant for life—Executors of deceased owner—Settled Land Act*, 1892 (45 & 46 *Vict. c.* 38), *s.* 2 (5), 58 (*i*), (*v.*) (*ix.*).—A testator gave his real and personal estate to trustees on trust to pay the income arising therefrom in equal shares to his children, and in the event of a child dying without issue, to divide his or her share of the income between the surviving children and the children of deceased children, who were to have their parents' shares. On the death of the last survivor of the children he directed the trustees to divide his estate in equal shares between his grandchildren or their descendants. A child of the testator dying leaving issue,

Held, that the child's share was payable to her executors till the death of the last surviving child.

Also held, that the surviving children and the executors of the deceased child had the powers of a tenant for life with regard to the real estate.—RE JOHNSON, *Warrington, J.*, 611 ; 1914, 2 Ch. 134.

4. *Person having powers of tenant for life—Devise to trustees—Accumulation of rents for twenty-one years—Afterwards to daughter for life—Settled Land Act*, 1882 (45 & 46 *Vict. c.* 38), *s.* 58, *sub-section* 1 (*vi.*).—A testator devised real estate to trustees upon trust to let and manage the same for twenty-one years after his death, and to pay outgoings out of the rents and profits and to accumulate the balance for twenty-one years, the accumulations to be held upon the trusts of the will and upon the expiration of the twenty-one years the real estate should be held upon trust for his daughter for life.

Held, that the daughter was a person having the powers of a tenant for life within the meaning of the Settled Land Act, 1882, *s.* 58.

Re Llewellyn (1911, 1 Ch. 451) followed.—RE BEAUCHAMP, *Eve, J.*, 320 ; 1914, 1 Ch. 676.

5. *Proceedings for protection of—Costs of proceedings "proposed to be taken" for the recovery of land—Opinion of counsel—Subsequent compromise—Proceedings abandoned before action brought—Costs actually paid by tenant-for-life—Right to be recouped out of capital—Settled Land Act*, 1882 (45 & 46 *Vict. c.* 38), *s.* 36.—Where certain costs had been incurred in taking the opinions of counsel preparatory to bringing an action for the recovery of possession of certain land formerly part of the settled estate, but which had been sold by predecessors in title to the property to a railway company, with certain rights to retake it in case of non-user by the company, which last event had happened ; and where as a result of the opinions of counsel, litigation was not proceeded with, but a compromise was arranged very beneficial to the estate.

Held, that these costs were costs "of any action or proceeding taken or proposed to be taken for recovery of land" within the meaning of section 36 of the Settled Land Act, 1882 (45 & 46 Vict. c. 38), and were properly payable out of capital.—RE WILKIE'S SETTLEMENT, *Sargant, J.*, 138 ; 1914, 1 Ch. 77.

SETTLEMENTS :—

1. *Covenant to settle after-acquired property—Estate or interest in expectancy—Prospective share as one of the possible next-of-kin of a person named in a will*—Spes successionis.—A covenant contained in a marriage settlement to settle "any estate or interest whatsoever in possession, reversion, remainder, or expectancy."

Held, not to catch the prospective share of the covenantor as one of the possible next-of-kin of her sister W. under a gift in a will to the next-of-kin of W., in case she died without leaving issue, as being a mere *spes successionis*, and to be too vague to be enforced in equity as an agreement to assign an expectancy.

Decision of Neville, J., reversed.—RE MUDGE, *C.A.*, 117 ; 1914, 1 Ch. 115.

2. *Double possibilities—Gift to unborn child of unborn person—Gift to bachelor's widow, with remainder to issue.*—By a settlement land was conveyed to the use of a bachelor for life, and after his death to his widow for life, and after her death, in case he should leave lawful issue, then "to the use of such issue, or to such of them as shall live to attain the age of twenty-one years." The bachelor subsequently married, and died, leaving a widow and issue.

Held, that the gift to the issue was altogether void, as involving a double possibility.

Semble, that the gift to the issue, if it had not been void, would have given the issue a vested interest, subject to be divested on death under the age of twenty-one.—RE PARK'S SETTLEMENT, *Eve, J.*, 362 ; 1914, 1 Ch. 595.

3 *General power of appointment—Power of sale—Exercise of general power—Compound settlement—Trustees—Settled Land Act*, 1882 (45 & 46 *Vict. c.* 38), *s.* 2, *sub-sections* 1, 5, 8; *s.* 38.—A testator by his will give a general power of appointment over his real estate to his wife, and gave a power of sale to his trustees. After his death she appointed the property by will to W. G. for life with remainders over in strict settlement. The tenant for life having come into possession contracted to sell the property in exercise of his powers under the Settled Land Acts. The purchaser objected that there were no trustees in existence for the purposes of the Acts of the compound settlement created by the two wills.

Held (reversing Eve, J.), that the exercise by the widow of her power of appointment gave her absolute ownership of the property, and put an end to the power of sale contained in the original will ; and that the purchaser's objection must prevail and the case be remitted to chambers for the appointment of trustees of the settlement created by the testatrix's will.—RE GORDON AND ADAMS' CONTRACT, *C.A.*, 67 ; 1914, 1 Ch. 110.

4. *Tenant for life and remainderman—Jointure rent-charge—No covenant to pay—Apportionment—Capital and income.*—Real estate was settled in 1890 on trusts which included a jointure rent-charge to the settlor's wife, and in 1900 there was a resettlement subject to the charges under the earlier settlement. Neither settlement contained a covenant on the part of the settlor to pay the rent charge.

Held, that as between the tenant for life and remainderman under the will of the settlor exercising a power in the resettlement, the rent-charge must be borne wholly out of income, and not apportioned as between income and corpus of the settled estate.—RE POPHAM, *Joyce, J.*, 673.

SET-OFF :—

Mortgagee of reversion and tenant—Action by mortgagee for rent—Counter-claim by lessee for damages against lessor—Damages for breach of covenant in building agreement.—The rule that an assignee of a *chose in action* can set-off a claim for damages against the assignor arising out of the same transaction has no application as between a lessee and a mortgagee of the reversion.

The rule that a purchaser or mortgagee is bound by the equities of a tenant in possession does not apply to the right of a tenant to damages for breach of a covenant in a building agreement.—REEVES *v.* POPE, *C.A.*, 248 ; 1914, 2 K. B. 284.

SHIPPING :—

1. *Collision—Damages—Reference—Value of ship fixed by registrar—Jurisdiction of court on motion to review amount—Loss*

of life—Sinking of King's ship—Drowning of crew—Claim to recover as damages pensions payable to relatives.—In a reference the assistant registrar and merchants had found (1) that the value of the hull and machinery of a submarine which was sunk with all hands by collision with a liner was £26,500, and (2) that a sum of £5,140, being the capitalized amount as pensions and grants paid or payable to the relatives of the men drowned by the Admiralty, was not recoverable as an item of damage, and accordingly ordered that item of claim to be struck out.

On an appeal by the owners of the liner, Evans, P., held that value of the hull and machinery of the submarine should be reduced from £26,500 to £23,850, and dismissed the cross-appeal by the Crown against the order of the registrar and merchants disallowing the claim for pensions. The Admiralty appealed.

Held, that there was no evidence before the President on which he could decide in this case that £26,500 was not a proper sum to award for the hull and machinery, and *semble*, even if there were evidence, the court of registrar and merchants being a court of original jurisdiction, there was no jurisdiction to vary an award on a question of amount. Accordingly the award of £26,500 must stand.

Held, further, by reason of the rule laid down by Lord Ellenborough in *Baker* v. *Bolton* (1808, 1 Camp. 493), that apart from statute, damages could not be recovered for negligence causing the death of a human being, the claim of the Admiralty had properly been struck out.

Decision of Evans, P. (30 T. L. R. 218) varied.—THE AMERIKA, *C.A.*, 654.

2. *Collision—Negligence—Passenger ticket—Condition not approved by Board of Trade—Merchant Shipping Act*, 1894 (57 & 58 *Vict. c.* 60), *s.* 320.—The tickets issued by the defendant shipowners to steerage passengers contained a number of clauses or directions printed on the face, of which the seventh was as follows:—"A contract ticket shall not contain on the face thereof any condition, stipulation, or exception not contained in this form." These clauses had been approved by the Board of Trade. On the back were certain clauses, one of which—Clause 3—exempted the defendants from liability for the negligence of their servants, but that clause had not been seen or approved by the Board of Trade.

Held (Buckley, L.J., dissenting on this point only), that although in the case of this passenger the jury had found that the defendants had taken reasonable steps to bring the condition on the back of the ticket to the notice of the passenger, yet that the condition, not being in the form approved and sanctioned by the Board of Trade, was no part of the contract; and further, that if it were, its operation was excluded by the terms of section 320 of the Merchant Shipping Act, 1894.—O'BRIEN *v.* OCEANIC STEAM NAVIGATION CO., *C.A.*, 303.

3. *Contract of sale—Ship abandoned in canal—"Constructively lost"—Removal of obstruction and sale of ship—Mode of transfer—Bill of sale—Delivery order—Merchant Shipping Act*, 1894 (57 & 58 *Vict. c.* 60), *ss.* 21, 24, 530.—Where a ship, having been sunk or abandoned in a harbour, becomes a constructive total loss, and, being an obstruction to navigation, is afterwards raised and sold by the harbour authority under section 530 of the Merchant Shipping Act, 1894, the proper mode of transfer to the purchaser is by a delivery order. A bill of sale in the statutory form prescribed by section 24 is no longer appropriate or effective, as the vessel has ceased to be registrable. The closing of the register does not affect the power of sale conferred by section 530 of the Act.

Decision of Eve, J. (58 SOLICITORS' JOURNAL, 197), reversed.—MANCHESTER SHIP CANAL *v.* HORLOCK, *C.A.*, 533.

4. *Loss by fire—Deck cargo and unseaworthiness—Shipowners' fault or privity—Bill of lading—Exemptions from liability—Merchant Shipping Act*, 1894 (57 & 58 *Vict. c.* 60), *s.* 502.—The plaintiff claimed damages for the loss by fire of certain cases of mineral waters shipped on board the defendants' steamship. The exceptions in the bill of lading exempted the shipowners from liability for loss or damage by fire. The ship was, in fact, unseaworthy, and the loss was caused by such unseaworthiness.

Held, that the exceptions in the bill of lading were not such as to exclude the protection given to the defendants by section 502.

Decision of Scrutton, J. (57 SOLICITORS' JOURNAL, 375; 1913, 1 K. B. 538), reversed.—INGRAM & ROYLE *v.* SERVICES MARITIMES DU TREPORT, *C.A.*, 172; 1914, 1 K. B. 54.

SHOPS ACT:—

Weekly half-holiday—Exemption—Sale of supplies and accessories to travellers—Shops Act, 1912 (2 *Geo.* 5, *c.* 3), *s.* 4 (1), (6), *and Second Schedule.*—The provision in the Second Schedule to the Shops Act, 1912, which exempts from the provisions of the Act as to a weekly half-holiday the sale of "motor, cycle, and air-craft supplies and accessories to travellers," is confined to the sale of supplies for motors, cycles, and air-craft, and not to the sale of other supplies or accessories to travellers.—WILLIAMS *v.* GOSDEN, *K.B.D.*, 49; 1914, 1 K. B. 35.

SOLICITOR:—

1. *Lunatic not so found by inquisition—Person appointed to exercise powers of committee of estate—Statutory agent of lunatic—Retainer of solicitor by quasi-committee—Liability of lunatic's estate for costs—Lunacy Act*, 1890 (53 & 54 *Vict. c.* 5), *ss.* 109, 116.—Where a person who has been appointed to exercise the powers of a committee of the estate of a lunatic not so found by inquisition under the Lunacy Act, 1890, retains and employs a solicitor to do necessary work in connection with the lunatic's estate, the lunatic, and not the person so appointed, is the client, and the solicitor is entitled to be paid his taxed costs out of the lunatic's estate.—RE E. G. (A PERSON OF UNSOUND MIND), *C.A.*, 497; 1914, 1 Ch. 927.

2. *Right of audience in county court—Workmen's compensation—Managing clerk appearing for party—Special leave of judge—Consolidated Workmen's Compensation Rules, r.* 35—*County Courts Act*, 1888 (51 & 52 *Vict. c.* 93), *s.* 72.—A solicitor's managing clerk, even though he is himself an admitted solicitor, cannot appear for a party in a workmen's compensation case in the county court without the special leave of the judge. The only solicitor with an unqualified right of audience is the solicitor on the record, and for this purpose there is no distinction between an arbitration and interlocutory proceedings.—ROGERS *v.* HOLBORN CORPORATION, *C.A.*, 656.

3. *Taxation of costs—Disbursements not paid by solicitor before delivery of bill—"Commencement of taxation"—Setting out items of disbursement under separate head in the bill—Express statement in letter to client that certain disbursements had not yet been paid—R.S.C., ord.* 65, *r.* 27 (29*a*).—For the purpose of a solicitor and client taxation under R.S.C., ord. 65, r. 27 (29*a*), the taxing master may adjourn a taxation in order to enable unpaid disbursements to be paid, and the taxation does not commence till the adjourned date; but the provisions of the rule that such unpaid disbursements must be stated in the bill and set out under a separate heading must be strictly observed, and it is not sufficient for notice of such unpaid disbursements to be given by letter, accompanying the bill.—RE HILDESHEIM, *C.A.*, 687.

4. *Taxation of costs—Mortgagee—Costs, charges and expenses of, and incidental to the security—Charges in anticipation of future work—Explanatory bill—Attendances in chambers—Amounts certified by master greater or less than amounts charged—Adjustment—Attendances at meetings of mortgagor's creditors—Costs payable by mortgagor.*—The solicitor to a mortgagee whose security included costs, charges and expenses of or incidental thereto, delivered to the mortgagor a bill containing an item of two guineas in anticipation of future work. This was subsequently increased to four guineas, and an explanatory bill was delivered to account for the four guineas so charged. On taxation the taxing master refused to allow the second two guineas charged in anticipation, and, treating the explanatory bill as a bill delivered to be taxed, disallowed it.

Held, that the four guineas was properly charged in anticipation, and that the bill was explanatory only, and not to be taxed.

With regard to certain attendances in chambers the amounts certified by the master were in some cases higher and in some lower than the amounts charged by the solicitors. The taxing master reduced the items higher than the amounts certified, but refused to allow the items which were lower to be increased.

Held, that the solicitors ought to be allowed the aggregate amount of the charges made, that aggregate being less than the aggregate allowed by the master.

Costs of certain attendances at meetings of the mortgagor's creditors, and of advice as to the application of the proceeds of sale of part of the mortgage security, were disallowed by the taxing master.

Held, that in the circumstances such costs were properly incurred, and were payable by the mortgagor.—RE PAICE & CROSS, *Joyce, J.*, 593.

5. *Woman—Right to be admitted to examination—Public office—Common law disqualification—Solicitors and Attorneys Act*, 1843 (6 & 7 *Vict. c.* 73), *ss.* 2, 3, 48—*Solicitors Act*, 1888 (51 & 52 *Vict. c.* 65), *s.* 10.—A woman is not a person within the meaning of section 48 of the Solicitors and Attorneys Act, 1843, and is disqualified by sex from being admitted to the preliminary examination for the purpose of qualifying as a solicitor.—BEBB *v.* LAW SOCIETY, *C.A.*, 153; 1914, 1 Ch. 286.

TITHES:—

Scheme for transfer of townships from one parish to another—Provisions for vicar of enlarged parish—Grant of "other ecclesiastical dues, offerings and emoluments"—Question whether tithe included—Pluralities Act, 1838 (1 & 2 *Vict. c.* 106), *s.* 26.—Under a scheme

approved by an Order in Council in 1909 for the purpose of transferring two townships which then formed part of the parish of E to the parish of I, drawn up under section 26 of the Pluralities Act, 1838, which provided that "from and after the passing of any Order in Council carrying this scheme into effect, the incumbent of the said parish of I shall have exclusive cure of the souls within the limits of the said districts now part of the parish of E and proposed to be annexed to the parish of I, and the fees for marriages, churchings and burials, and other ecclesiastical dues, offerings, and emoluments arising from the said districts shall thenceforth belong to the incumbent of the said parish of I, to which such district shall have been annexed," the question arose whether the tithe passed to the incumbent of E under the concluding words "other ecclesiastical dues," &c.

Held, that the words must be read *ejusdem generis* with the words preceding, and therefore that the tithe did not pass under them.—BOLAM *v.* ALLGOOD, *C.A.*, 46.

TRADE-MARK :—

1. *Registration—Invented word used so as to indicate origin of manufacture—"Parlograph"—Trade-Marks Act*, 1905 (5 *Ed.* 7, *c.* 15), *s.* 9.—The word "Parlograph" is an invented word within the meaning of section 9 of the Trade-Marks Act, 1905. When a word is invented for the first time, *prima facie*, it is not used to denote a particular article, unless it is a new kind of article. Such a mark as this, when registered, will mean that it is used with reference to articles which are produced by the British Parlograph Co.—RE CARL LINDSTROEM AKTIEN-GESELLSCHAFT'S TRADE-MARK, *Sargant, J.*, 580; 1914, 2 Ch. 103.

2. *Registration — Registrable mark — "Distinctive" — Trade-Marks Act*, 1905 (5 *Ed.* 7, *c.* 15), *s.* 9 (5).—The question being whether a colour stripe, consisting of a red stripe between two blue stripes, woven into the fabric of a fire hose, was distinctive within the meaning of the Trade-Marks Act, so as to be a registrable trade-mark.

Held, that it might be registered on the condition that it should only be a protection against the use of a colour stripe, substantially of a certain width and woven throughout the length of the fabric. —RE REDDAWAY, *Warrington, J.*, 415; 1914, 1 Ch. 856.

3. *Registration—"Swankie"—Opposition by owners of registered mark—"Swan"—Calculated to deceive—Dissimilarity—Trade-Marks Act*, 1905 (5 *Ed.* 7, *c.* 15), *ss.* 11, 19.—The owners of a trade-mark, consisting of a devise of a swan, in connection with the word "swan," opposed the registration of the word "swankie," in conjunction with a similar class of goods, on the ground that the use of such mark would cause confusion and be calculated to deceive.

Held, that there was no possibility of confusion between the two marks, and that the application to register ought to be allowed.—RE CROOK'S TRADE-MARK, *Joyce, J.*, 250.

TRADE UNION :—

Trade dispute—Motive—Trade Disputes Act, 1906 (6 *Ed.* 7, *c.* 47), *s.* 3.—Employees who were on good terms with their employer, and had contracted to serve him at a fixed wage, were ordered by the officials of their union to strike for higher wages.

In an action claiming damages for inducing the employees to break their contracts, the defendants, officials of the union, pleaded that the acts of which the plaintiff complained were acts done by them "in contemplation or furtherance" of a trade dispute within section 3 of the Trade Disputes Act, 1906, and, therefore, the action was not maintainable against them.

Held, that the defence was a good defence, notwithstanding that the motive prompting the acts was not altogether free from malice, since the existence of malice did not render the protection of the statute for acts done in contemplation or furtherance of a trade dispute void.—DALLIMORE *v.* WILLIAMS, *C.A.*, 470.

TRUST :—

1. *Investment—Discretion of trustees—Inquiry as to continuing investments—R.S.C.*, 1883, *ord.* 55, *rr.* 3, 12.—The trustees of a settlement having advanced money on mortgage on two separate securities, one of which had depreciated in value, the tenant for life asked the court to direct inquiries to be made as to whether the mortgages were proper to be continued as investments.

Held, that the court ought to direct the inquiries to be made.—RE D'EPINOIX, *Warrington, J.*, 454; 1914, 1 Ch. 890.

2. *Resulting trust—Fund raised by subscription for a particular object—Unapplied surplus—Resulting trust for the subscribers—Rule in* Clayton's case.—The rule in *Clayton's case* (1816, 1 Mer. 585) is a mere rule of evidence and not an invariable rule of law, and therefore it was held not to apply in the case of the redistribution of the unused surplus of a fund subscribed for assisting the sick and wounded in the Balkan War, which surplus accordingly became distributable under a resulting trust among all subscribers to the fund rateably, and not payable to the latest subscribers in full of their subscriptions so far as the surplus would go.—RE BRITISH RED CROSS BALKAN FUND, *Astbury, J.*, 755.

See also Appropriation, Will.

TRUSTEE :—

1. *Breach of trust—Estate distributed* in specie—*No valuation—Mortgage securities—Appropriation of worthless mortgages to a settled share—Liability of trustee—Judicial Trustees Act*, 1896 (59 & 60 *Vict. c.* 35), *s.* 3.—Where a trustee distributed the trust estate, which consisted of two mortgages, nominally of nearly equal amounts, *in specie*, and gave one mortgage, which was good, to one set of beneficiaries, and kept the other for later distribution, and this was, although not to his knowledge, in fact, worthless at the time he parted with the good mortgage, the other set of beneficiaries were held entitled to recover against the trustee for a breach of trust.

In such a case the trustee is not protected by section 3 of the Judicial Trustees Act, 1896.

Rawsthorne v. *Rowley* (1909, 1 Ch. 409 note) distinguished.—RE BROOKES, *Astbury, J.*, 286; 1914, 1 Ch. 558.

2. *Breach of trust—Payment of income to person not entitled through honest mistake of trustee—Doubtful construction of will—Limitation of action—Relief from liability—Trustee Act*, 1888, *s.* 8 (1)—*Judicial Trustees Act*, 1896, *s.* 3.—The sole surviving trustee under a will, acting under professional advice, paid income from 1896 to 1904 to the widow of a deceased tenant for life, who was not entitled to it, and after his death in 1904 his representatives continued the payment for a year. In 1910 the true construction of the will was determined by the court, which held that the income so paid should have been accumulated until 1908, when it became undisposed of until the period of distribution, which had not yet arrived, and an action was brought by the next-of-kin against the trustee's representatives for breach of trust.

Held, that the Trustees Act, 1888, *s.* 8 (1) (*b*), and the proviso thereto applied, and the action was not barred by lapse of time.

Held, however, that the court had jurisdiction to relieve the defendants from liability under the Judicial Trustees Act, 1896, *s.* 3, and, in the circumstances, would exercise it in their favour.

Decision of Warrington, J., reversed.

Davis v. *Hutchings* (1907, 1 Ch. 356) dissented from.—RE ALLSOP, *C.A.*, 9; 1914, 1 Ch. 1.

3. *Public Trustee—Execution of deed by retiring trustees—Consent of Public Trustee to act subsequently given—Validity of appointment—Public Trustee Act*, 1906 (6 *Ed.* 7, *c.* 55), *s.* 2 (1)—*Public Trustee Rules*, 1912, *rr.* 8 (2), 10.—By the rules made under the Public Trustee Act, 1906, no appointment, except by a testator, of the Public Trustee to be a trustee shall be made unless and until his consent has been signified in writing under his hand and seal. Three trustees of a will, who desired to retire and appoint the Public Trustee sole trustee in their place, executed a deed so appointing him. Three months later the Public Trustee gave his formal consent in manner required by the Act, and three days afterwards he executed the deed.

Held, that the deed of appointment did not operate effectually until the execution thereof by the Public Trustee, and that, as he had then given his consent to act, the appointment was valid.—RE SHAW, *C.A.*, 414.

VENDOR AND PURCHASER :—

1. *Building scheme—Restrictive covenant—Right reserved to the vendor to depart therefrom—Sale of lots subject to these restrictions—Resale so subject—"Vendor"—Subsale of part of the lots with release of the restrictions by original vendor—Rights of purchasers and sub-purchasers.*—One W laid out his freehold estate for building in lots, subject to restrictive stipulations, three of which were as follows: "8.—The houses to be erected upon the estate are each to be of uniform elevation, in accordance with the drawings to be prepared or approved by the vendor's surveyor. 11.—No trade, business or manufacture of any kind is to be carried on upon any of the lots now offered, except those marked 'shop lots.' 16.—The vendor reserves the right of allowing any departure from these stipulations in any one or more cases." W and his trustees sold to the plaintiff part of the property, subject to the stipulations in the schedule, which were in fact the stipulations in the original deed transcribed. The plaintiff sold a part, which ultimately, by divers mean assurances, acts in the law and events, came into the ownership of the defendant Payne, who erected a motor garage on a plan approved by W. The plaintiff sought to restrain the defendant from so doing.

Held, that the word "vendor" meant W, and not the plaintiff, and that the defendants were only bound by the stipulations as

varied by W, and that the defendants had committed no breach of the stipulations as so varied.—MAYNER v. PAYNE, *Neville, J.*, 740.

2. *Contract contained in correspondence—Memorandum in writing—Letter enclosed in envelope addressed to a party—Statute of Frauds* (29 *Car.* 2, *c.* 3), *s.* 4.—Where it is proved or admitted that a letter has been sent to and received by a party enclosed in an envelope addressed to that party, the letter and envelope together constitute one document or memorandum in writing sufficient to satisfy the Statute of Frauds.

Decision of Neville, J., reversed.

Pearce v. *Gardner* (1897, 1 Q. B. 688) applied.—LAST v. HUCKLESBY, *C.A.*, 431.

3. *Incidence of improvement charge—Assessment after date of contract—Vendor and Purchaser Act*, 1874 (37 & 38 *Vict. c.* 78), *s.* 9—*London County Council (Improvements) Act*, 1899 (62 & 63 *Vict. c.* 266), *s.* 61.—Section 61 of the London County Council (Improvements) Act, 1899 (62 & 63 Vict. c. 266), after reciting that the scheme for making the new street from Holborn to the Strand "will or may" permanently increase the value of adjoining property, and that it was reasonable that, in consideration of such increased value, a charge should be placed on such lands, provided that all lands within the improvement area, which included the land the subject-matter of this summons, should "be liable to have" an improvement charge placed upon them. After the date of the contract an assessment of an annual improvement rent charge of £30 on this property was in fact approved by the Council.

Held, that the purchaser was not entitled to a conveyance free from the improvement charge.

Stock v. *Meakin* (1900, 1 Ch. 683) distinguished.—RE FARRER AND GILBERT'S CONTRACT, *Sargant, J.*, 98; 1914, 1 Ch. 125.

4. *Parcels—Condition negativing compensation for misdescription—No title to strip of land coloured on plan*—Falsa demonstratio—*Construction of conveyance.*—Held, upon the true construction of a conveyance to a purchaser, that a strip of land which had been acquired by adjoining owners by adverse possession under the Statutes of Limitation, but which had by mistake been included in the parcels expressed to be conveyed, as being coloured red upon the plan indorsed on the conveyance, did not pass to the purchaser, the inclusion on the plan being rejected as *falsa demonstratio.*

Decision of Sargant, J., reversed.—EASTWOOD *v.* ASHTON, *C.A.*, 152; 1914, 1 Ch. 68.

5. *Specific performance—Undisclosed agreement to prevent easement of light being acquired—Licence to enter premises—No positive obligation on purchaser—No warranty that windows are ancient lights.*—The lessee of business premises by his lease agreed to purchase the property at a named price in an event which happened. Certain windows, the light from which was necessary for his business, were only opened by the lessor under a licence in writing from, and agreement with, adjoining owners, dated prior to the lease, but no notice of this agreement was given by the lessor to the lessee. The licence authorized the adjoining owners to enter the premises and block up the windows, in the event of the lessor or his assign's default in so doing upon notice given. The purchaser, upon discovering it, refused to complete.

Held (reversing Astbury, J.), that the agreement as to the windows was not an objection to the title. There is no warranty upon the sale of house property that its windows are ancient lights.

Greenhalgh v. *Brindley* (1901, 2 Ch. 324) approved.—SMITH *v.* COLBOURNE, *C.A.*, 783.

See also Covenant, Specific Performance.

VEXATIOUS ACTIONS:—

Criminal proceedings—Restriction of jurisdiction to civil proceedings—Vexatious Actions Act, 1896 (59 & 60 *Vict. c.* 51), *s.* 1.—The Vexatious Actions Act, 1896, does not apply to criminal proceedings.—RE BOALER, *C.A.*, 634; 1914, 1 K. B. 122.

WATERWORKS:—

1. *Supply—"Domestic purposes"—Catering business—Metropolitan Water Board (Charges) Act*, 1907 (7 *Ed.* 7, *c. clxxi.*), *ss.* 8, 25.—Where the occupier of a house, rated in the usual way in respect of water supplied for domestic purposes, uses that water for domestic purposes only, the fact that more than the ordinary amount of water is used by the occupier, because of business done with customers, does not entitle the Metropolitan Water Board to make an additional charge on him for the water used in his business.

So held, affirming decision of Court of Appeal (57 SOLICITORS' JOURNAL, 753; 1913, 2 K. B. 257, 11 L. G. R. 1150).—METROPOLITAN WATER BOARD *v.* AVERY, *H.L.*, 171; 1914, A. C. 118.

2. *Supply—Workhouse—"Private dwelling-house"—Bristol Waterworks Act*, 1862 (25 & 26 *Vict. c. xxx.*), *ss.* 68, 73—*Waterworks Clauses Act*, 1847 (10 *Vict. c.* 17), *ss.* 48, 53.—By a local Waterworks Act, a waterworks company were bound, at the request of the owner or occupier of any "private dwelling-house," within the limits of a certain area, to furnish him with a sufficient supply of water for his "domestic use." The Act incorporated the Waterworks Clauses Act, 1847, but did not contain any schedule of rates payable for the supply of water to an owner or occupier of a dwelling-house other than a "private dwelling-house."

The Court of Appeal (Fletcher Moulton, L.J., *dissentiente*), affirming a decision of Eve, J. (1912, 1 Ch. 111, 10 L. G. R. 34), were of the opinion that the workhouses and other premises in question did not any of them constitute "a private dwelling-house" within the meaning of the section, and therefore that there was no obligation on the part of the water company to grant a supply of water to the institutions under section 53 of the Waterworks Clauses Act, 1847. The guardians appealed.

After consideration, the House of Lords dismissed the appeal with costs.—BRISTOL GUARDIANS *v.* BRISTOL WATERWORKS CO., *H.L.*, 318; 1914, A. C. 379.

WAY, RIGHT OF:—

Easement—Parol agreement—Implied terms.—A wall on one side of a narrow lane leading to the back premises of a house was, by agreement between the owner of the house and the lane, set back and rebuilt, and a general right of way granted over the lane.

The Court of Appeal, on the facts, held that the right of way was not to be restricted to access to the house merely for such purposes as were reasonably required at the date of the grant, and, therefore, was not affected by the house being turned into an hotel.

The hotel company appealed on certain questions of fact (not dealt with in the report in the court below as reported 1913, 1 Ch. 113, but set out in 57 SOLICITORS' JOURNAL, 58, and more fully in 107 L. T. 695), submitting (*inter alia*) that the wall was a party wall, and that they were entitled to alter the position of the gate leading into their premises, and to widen it.

Held, that there was no duty on the court to spell out a conveyance of the land, where the evidence simply was that adjoining owners some thirty years ago, for mutual convenience, had come to an arrangement to widen a lane, and had, since the widening, each used it. While not agreeing with the reasons given by the judges of the Court of Appeal for their decision, they came substantially to the same conclusion as to the rights of the parties, and therefore dismissed the appeal, subject to a variation as to the position of the gate and as to costs.—GRAND HOTEL, EASTBOURNE *v.* WHITE, *H.L.*, 117.

WILL:—

1. *Advancement by parent to child—Debt due to testator—Whether realised by the will—Advances to be brought into hotchpot.*—A declaration in a will that all moneys advanced to any of the testator's children, or his or her wife or husband, should be brought into hotchpot and accounted for on the distribution of his estate, was held not to cover two advances by way of loan to the husband of one of the testator's daughters, one of a sum of £1,000, secured by promissory note given before the date of the will, and another of a sum of £650, also secured by promissory note given after the date of the will. The clause had not had the effect of altering the nature of transactions which were really debtor and creditor transactions. Such a clause is a charging and not a discharging clause, and applies primarily to advances by way of anticipatory portion.

Held, accordingly, that these debts were personally recoverable.

Judgments of the Lords Justices in *Limpus* v. *Arnold* (15 Q. B. D. 300) not in conflict with this view.—RE WARDE, *Sargant, J.*, 472.

2. *Bequest between brother, his wife and their daughter—Latent ambiguity—Five daughters—Extrinsic evidence—Surrounding circumstances and intention—Construction—Division into three equal shares.*—A testatrix left her residuary estate to be divided "between my brother, his wife and their daughter." There were five daughters. Evidence was admitted that the testatrix was intimate with only one of the daughters, and that in a revoked will she had left her half her residuary estate.

Held, that the residue must be divided in three equal shares between the brother, his wife and their daughter.—RE JEFFERY, *Warrington, J.*, 120; 1914, 1 Ch. 375.

3. *Bequest for purchase of land—Subsequent gift* inter vivos—*Codicil—Confirmation of will—Ademption.*—By his will dated the 31st of December, 1904, a testator gave £500 to trustees for the purchase of land to be used as glebe land for the parish of M. In 1905 the testator purchased a plot of land for £375, and conveyed it to trustees upon trust for the benefice of M. in memory of his

wife. By a codicil, made in 1911, the testator, after making some specific bequests, in all other respects confirmed his will.

Held, that the legacy of £500 had not been either wholly or in part adeemed by the subsequent gift of the land purchased in 1905.—RE MURRAY AYNSLEY, *Joyce, J.*, 754.

4. *Bequest of "all to be divided in equal parts"—"Pay to trustees"—Omission of word "devise"—Real estate included in the bequest—The word "all" used as an adjective or noun.*—A testator by his will made the following gift: "I give and bequeath unto all the undermentioned names all to be divided in equal parts." The word "devise" did not occur in the will, though the word "pay" did.

Held, that the idea of totality conveyed by the word "all" outweighed, not only the omission of the word "devise," but also the expressions which seemed to negative the inclusion of real estate, and that consequently the testator's realty passed under the gift.

Bowman v. *Milbanke* (1 Lev. 130) distinguished.—RE SHEPHERD, *Eve, J.*, 304.

5. *Construction—Appointment by testatrix of "my nephews" A, B, and C as trustees—B and C nephews by affinity only—A nephew by consanguinity—Gift of residue to "my nephews and nieces"—Only nephews by consanguinity take—B and C not included in the class to take.*—The use of the word "nephews" by a testatrix in appointing three trustees *nominatim*, one of whom was her own nephew, and the other two her husband's nephews, is not a sufficient indication of the testatrix's intention to include in the class of "my nephews and nieces" to take her residue, her husband's nephews and nieces, and is not even effectual to extend the class so as to include her husband's two nephews who are named as trustees, and described by the testatrix as "my nephews."—RE GREEN, BATH *v.* CANNON, *Sargant, J.*, 185; 1914, 1 Ch. 134.

6. *Construction—Bequest of residue "to be divided equally between the unmarried daughters of my brother-in-law, Dr. J. H., and Dr. A. S. G."—Whether to A. S. G. or to his unmarried daughter—Division* per capita *or* per stirpes.—A testatrix gave her residue to trustees to divide the same into equal moieties, "one moiety to be paid to my niece, Eugenie Mackinnon, and the other moiety to be divided equally between the unmarried daughters of my brother-in-law, Dr. J. Harper, and Dr. A. S. Grant equally." There were three unmarried daughters of Dr. J. Harper, and Dr. A. S. Grant had one unmarried daughter, an infant four years old.

Held, on the first point, that Dr. A. S. Grant took personally, to the exclusion of his unmarried daughter; on the second point that the three unmarried daughters of Dr. J. Harper and Dr. A. S. Grant formed a class of four, and each took a fourth, the circumstances of the case not being in favour of a stirpital division.

Re Walbran, Milner v. *Walbran* (1906, 1 Ch. 64), followed on the first point, but distinguished on the second.—RE HARPER, *Sargant, J.*, 120; 1914, 1 Ch. 70.

7. *Construction—"Contents of house"—Objects of art—Furniture—Decorations—Articles removable by tenant.*—A testator by his will, after defining "ordinary furniture" as including carpets, curtains, articles of ornament of an ordinary kind, household crockery, &c., but excluding sculptures, pictures, objects of art or antiques, whether furniture or otherwise, devised and bequeathed his real and personal estate to trustees upon trust for sale, and to pay to his wife a sum equal to 10 per cent. of the net proceeds of sale of such of the contents of his house as were not included in the expression "ordinary furniture." At the time of his death the testator had a leasehold house.

Held, that the expression "contents of my house" included everything that could, as between landlord and tenant, be removed by the testator from the house, including panellings, mantelpieces, painted ceilings, &c.—RE OPPENHEIM, *Joyce, J.*, 723.

8. *Will—Construction—Devise—Life estate—Remainder to "my nearest male heir"—"My nearest and eldest male relative"—No male heir—Heiress-at-law.*—The testator, a bachelor, devised real estate to a trustee and his heirs in trust to pay the rents and profits to H. H. M. for life, and after his decease to convey, assign, and assure the same "unto my nearest male heir, and should there be two or more in equal degree of consanguinity to me, then I direct the said 'trustee' to convey, assign and assure the same unto the eldest of my male kindred for the term of his natural life, with remainder to the heirs of the body of my eldest male relative." The testator bequeathed the residue of his personal estate to his trustee in trust for H. H. M. for life, expressing a desire that he should not mortgage or anticipate the same, but assist the trustee in keeping the real estate in such repair as might be necessary for preserving its value, "and keeping up the remainder in trust for my nearest and eldest male relative" who should be at the death of H. H. M. Mrs. W. was the heiress-at-law of the testator, both at his death and at the death of H. H. M. The nearest male relative of the testator at the time of his death was the son of a female first cousin, and at the time of H. H. M.'s death was the appellant, who was the son of a daughter of the same cousin.

Held, that the testator did not die intestate, and that the appellant was entitled as devisee to take the real estate, since the testator in the direction to convey to his nearest male heir used the word "heir" as merely denoting his nearest male relative in popular language; and, further, that the person to take under that direction was to be ascertained at the death of the tenant for life.—LIGHTFOOT *v.* MAYBERY, *H.L.*, 609.

9. *Construction—Direction to trustees to pay "all death duties" out of residue—Covenant by testator to pay £15,000 to settlement—Trustees—Mortgage to secure payment—Death duties on settled fund—Finance Act*, 1894, *s.* 14.—A direction in the will of a testator to pay "all death duties" out of his residuary estate did not extend to include certain estate duty, settlement estate duty and succession duty which had become payable on a sum of £15,000 which the testator, by deed made in 1884, covenanted to pay to trustees during his life or six months after his death in consideration of the marriage of his daughter, the payment being secured by a deed of even date on certain freehold lands belonging to the testator, but which sum had not been paid during the testator's lifetime.

Re Pimm, Sharpe v. *Hodgson* (1904, 2 Ch. 347), applied.—RE BRIGGS, *Astbury, J.*, 722.

10. *Construction—Gift of income from house property equally between children—Issue of such children substituted on death of children—Destination of each child's share of rents after death—Implication of cross-remainders substituting issue in the place of their deceased parent—Gift over on death of last child.*—Where a testator gave real estate "upon trust to pay the income arising therefrom unto my children in equal shares during their lives or to their issue in case any of them shall die before the others of them, and from and after the decease of all my children then in trust to hold the same property in trust to sell the same, &c."

Held, that the principle of *Armstrong* v. *Eldridge* (1791, 3 Bro. C. C. 215) could be applied to this case, even though there was a clause substituting issue for their deceased parents.

Held, accordingly, that there was a sufficient indication in the will of an intention on the part of the testator that there should be, so to speak, cross-remainders in respect of this income, the issue being substituted on the death of their parent in respect of such parents share.—RE TATE, *Sargant, J.*, 119.

11. *Construction—Gift to brothers and sisters—Substantial gift to their issue—One legitimate sister only—One illegitimate sister—Rights of issue of illegitimate sister—Testator's knowledge of her death—Effect of use of plural word "sisters."*—Where a testator made a bequest to his "brothers and sisters" with a substitutionary gift over to their issue, and he had, in fact, four brothers and two sisters, only one of whom was legitimate, and the other illegitimate,

Held, that the court could not give adequate effect to the use of the plural term "sisters" without including the illegitimate sister as a *persona designata* under the will, and that her issue were accordingly entitled to share in the residuary estate.

Re Pearce, Alliance Assurance Co. v. *Francis* (1914, 1 Ch. 254), commented on and applied.—RE EMBURY, *Sargant, J.*, 612.

12. *Will—Construction—Gift to "children"—Legitimate and illegitimate children in existence—Illegitimate children excluded—Knowledge of testator as to family.*—A testatrix made a gift by her will to the children of her brother F. F. had both illegitimate and legitimate children, the former by a woman to whom he was reported to have been married, and who died before his marriage, but the testatrix, who knew the children, believed all to be legitimate.

Held (affirming Sargant, J.), that as there were legitimate children to take, and there was nothing on the face of the will to indicate a special intention to benefit the illegitimate children as *persona designatæ*, only the two legitimate children took under the gift.

Re Brown (63 L. T. 159) followed.

Re Du Bochet (1901, 2 Ch. 441) overruled.—RE PEARCE, *C.A.*, 197; 1914, 1 Ch. 254.

13. *Construction—Gift to domestic servants—Service during two years—Attendant as male nurse—"Domestic" equivalent to "household."*—A testator bequeathed to each of his domestic servants who should have been in his service for two years before his death one year's wages free of duty. For two years prior to his death, with a break of four months, he was attended by a male nurse, who did not sleep in the house.

Held, that the attendant was a domestic servant, as being a household servant, and not an outdoor servant.

Held also, that the holiday of four months, being taken with the consent of the master, did not prevent the service from being

continuous during the two years.—RE LAWSON, *Eve, J.*, 320; 1914, 1 Ch. 682.

14. *Construction—Gift to named persons on attaining twenty-one—Nephews and nieces—Some attain twenty-one, but pre-decease testatrix—Class—Lapse.*—A testatrix by her will gave the residue of her estate upon trust for all her nephews and nieces thereinafter named, "that is to say, W. B. and J. A., the two children of my sister, H. A. and A. P., W. B., C. L., A. D., and E. B., the five children of my brother, S. B., who, being sons, have attained or shall attain the age of twenty-one years, or being daughters, have attained or shall attain that age, or shall marry under that age, in equal shares as tenants in common." All the named nephews and nieces attained the age of twenty-one, but three predeceased the testatrix.

Held, that the gift was not a class gift, but a gift to named persons, and the shares of those who predeceased the testatrix lapsed.—RE BENTLEY, *Joyce, J.*, 362.

15. *Construction—"Issue"—Gift over "in case there shall be no child or other issue of A who shall attain twenty-one"—Gift to class and to "the issue of such as shall die leaving issue upon attaining the age of twenty-one"—Remoteness—Gift void.*—A testator gave his residuary real estate upon trust for E. P. for her life, and after her death for her children who attained the age of twenty-one years, and in the event of there being no child or other issue of E. P. who should attain the age of twenty-one years, the property to be equally divided between the brothers and sisters of E. P. as tenants in common and the issue of such as should have died leaving issue upon attaining the age of twenty-one years, so that in all cases children should take their deceased parents' share. On the death of E. P., without having had any child,

Held, that the rule in *Sibley* v. *Perry* (7 Ves. 522) did not apply, and that the limitations were void for remoteness.—RE JOHNSON, PITT *v.* JOHNSON, *Joyce J.*, 219.

16. *Construction—Legacy to Manservant—One person answering the description—Intention of testator*—A testator, who had in his employment a valet and a chauffeur, gave a legacy to his "manservant" if he should be in his employment at the date of his death. At the date of his death the testator had only the chauffeur in his employment.

Held, that the chauffeur was entitled to the legacy.—RE BELL, *Warrington, J.*, 517.

17. *Construction of legal devise—Strict settlement—Compendious form—Devise to "every son of mine and his issue male in succession, so that," &c.—Merely introductory words to the subsequent limitations.*—Where there was a gift in a will "unto and to the use of every son of mine and his issue male in succession, so that every elder son and his issue male be preferred to every younger son and his issue male, and that my grandsons respectively, with their respective issue male, take in succession according to their respective seniorities, and so that every such son and every such grandson who shall be begotten in my lifetime take an estate for his life without impeachment of waste, with remainder to his first and every subsequent son successively according to seniority in tail male, and that every such grandson who shall be begotten after my decease take an estate in tail male,"

Held, that the initial words of the devise were not intended to confer any estate on the first taker, but were merely introductory to the rest of the clause, and that the clause must be read as a whole, the effective limitations being after the words "so that," the result being that the plaintiff and his father were only life tenants.

Re Simcoe, Vowler-Simcoe v. *Vowler and Others* (57 SOLICITORS' JOURNAL, 573), distinguished, on the ground that there the estate of the first taker was untouched by the subsequent limitations.—RE LORD LAWRENCE, *Astbury, J.*, 672.

18. *Construction — Securities — "Standing in my name"—Foreign Government Bonds—Bonds to bearer—Custody of bankers.*—A testatrix left by her will "all the stocks, shares, debentures, debenture stock and other securities which shall be standing in my name at my decease" to a certain legatee. At her decease there were in the custody of her bankers, together with securities standing in her name, certain foreign Government Bonds to bearer, the name of the testatrix occurring only in the register of the bank.

Held, that the foreign bonds to bearer were not securities standing in the name of the testatrix.—RE MAYNE, *Warrington, J.*, 579; 1914, 2 Ch. 115.

19. *Construction—Special power of appointment—Portions—Estate duty—"Everything passing under this my will" to be free of duty—Portions appointed under power pass under will.*—By his marriage settlement a settlor, in exercise of a power of appointment, appointed certain estates to trustees for a term of years upon trust to raise, for the portion or portions of any children of the marriage, a sum of £20,000 to be divided between them as he should by deed or will appoint, or in default of appointment, equally. By his will the settlor, who had five children, appointed the £20,000 to his three daughters in equal shares, and after bequeathing certain legacies free of estate and legacy duty, by clause 8, bequeathed various moneys and securities upon trust to pay his funeral and testamentary expenses, "including estate duty on everything passing under this my will."

Held, that, upon the true construction of the will, the appointed portions passed under the will, so that the estate duty payable upon the portions fund was payable out of the property disposed of under clause 8 of the will.—RE MARQUIS OF BATH'S SETTLEMENT, *Joyce, J.*, 578.

20. *Construction—Specific legacy—Additions to gift of such legacy of the words, "as a general, and not as a specific legacy"—Abatement or not, with other general legacies.*—Where some specific legacies were devised, followed by the words "as general, and not as specific, legacies," but the gift of one specific legacy was not followed by these words, and the estate was insufficient to pay all the legacies in full, and some had, therefore, to abate,

Held, that the specific legacies devised "as general, and not as specific, legacies" must abate with the general legacies, and must be taken as of their value at the expiration of one year from the testator's death, no interest thereon being payable to such legatees in the interval.—RE COMPTON, *Sargant, J.*, 580; 1914, 2 Ch. 119.

21. *Construction—Substitutional or original gift—"Shall die in my lifetime"—Child dead at date of will leaving issue—Proviso giving the share "their parent would have taken" to issue surviving the testator—Words of futurity or qualification.*—A testator gave the proceeds of conversion of his residuary estate in trust for his children living at his death, subject to a proviso as follows, "if any child of me shall die in my lifetime, leaving a child or children who shall survive me, . . . such child or children shall take the share their parent would have taken had he or she survived me."

Held (affirming Sargant, J.), that the words "shall die" were expressive of qualification, not futurity, and, therefore, that the children of a child who was dead at the date of the will took the share which their father would have taken had he survived the testator, although a legacy was also given to each of them by name.

Loring v. *Thomas* (1 Dr. & Sm. 497) and *Barraclough* v. *Cooper* (1908, 2 Ch. 121n) followed.—RE WILLIAMS, METCALF *v.* WILLIAMS, *C.A.*, 470; 1914, 1 Ch. 219.

22. *Forfeiture clause of after-acquired property not settled—"Possessed of or entitled to"—Alternative, not cumulative clause—Reversionary interest—Vesting in possession—What after-acquired property subject to the clause.*—Where there was a clause of forfeiture of benefits under her father's will if the daughter did not settle after-acquired property which she should become "possessed of or entitled to" over the value of £1,000, the words "possessed of or entitled to" were held to be not cumulative but alternative, and separate meanings must accordingly be found for them, and accordingly property of over the value of £1,000 in respect of which the daughter had before her father's death a vested reversionary interest was held to be subject to the clause of forfeiture.

Re Bland's Settlement, Bland v. *Perkin* (1905, 1 Ch. 4), distinguished.—RE BROOK, BROOK *v.* HIRST, *Sargant, J.*, 399.

23. *General direction to pay debts—Administration—Mortgage debts—Specific devises—Specific property included in subsequent provision for payment of debts—Real Estate Charges Act*, 1854 (17 & 18 *Vict. c.* 113), *s.* 1—*Real Estate Charges Act*, 1867 (30 & 31 *Vict. c.* 69), *s.* 1—*Exoneration of specific devises from the mortgage debts.*—Where the first clause of a will created an implied charge of debts (including mortgage debts) by the words "first I will that all my just debts (including mortgage debts) and funeral and testamentary expenses be paid and satisfied," but a subsequent residuary clause provided specific bequests and devises for the discharge of the same debts (including mortgage debts),

Held, that the testator intended to explain and limit the implied charge by the creation of the residuary fund, and that, accordingly, no other part of the real estate than that comprised in the residuary fund was charged with debts and funeral and testamentary expenses.

Held, also, that the proportion of mortgage debts, not discharged out of the special trust fund, must be borne by the various mortgaged properties themselves, each bearing the balance of its own incumbrance.

Held, further, that such proportion of the other debts and expenses as was not discharged out of the residuary fund must be borne as between the specifically bequeathed personalty and the various specifically devised real estates rateably in proportion to their net values.

Thomas v. *Britnell* (1751, Ves. Sen. 313) and *Corser* v. *Cartwright* (1873, L. R. 8 Ch. 971) followed.—RE MAJOR, *Sargant, J.*, 286; 1914, 1 Ch. 278.

24. *Gift to Roman Catholic community—Monastic society—Franciscan Friars—Roman Catholic Relief Act*, 1829 (10 *Geo.* 4, *c.* 7), *s.* 28—*Policy of—Enforcement of statute—Valid gift.*—A testator devised and bequeathed the residue of his real and personal property upon trust for a society or institution of Franciscan Friars, who were members of a Roman Catholic religious order, living in community in England.

Held, that there was a valid gift to the individual members of the society, which was not invalidated by the provisions or policy of section 28 of the Roman Catholic Relief Act. 1829, the provisions of which section had never been enforced in this country.

Cocks v. *Manners* (L. R. 12 Eq. 574) followed.—RE ERASMUS SMITH, *Joyce, J.*, 494; 1914, 1 Ch. 937.

25. *Investment—Trust to invest in public stocks and no other investment—Meaning of "public stocks"*—32 & 33 *Vict. c.* 104, *s.* 6.—A testator, by his will dated in 1868, directed his trustees to invest the trust funds in "some or one of the public stocks of the Bank of England and on no other investment whatsoever."

Held, that the trustees could only invest in public stocks, and that the expression "public stocks" was confined to public stocks forming part of the National Debt of this country.

Hewitt v. Price (4 Man. & Gr. 35) followed.—RE HILL, FETTES *v.* HILL, *Eve, J.*, 399.

26. *Legacy to child when she attained twenty-three—Legatee attaining that age before death of testator—Date from which interest payable.*—Where legacies were to be paid to a testator's children on their attaining twenty-three, and a child attained twenty-three during the testator's lifetime, it was held that such child was not entitled to interest on such legacy from the date of the testator's death, but only after the expiration of one year therefrom according to the ordinary rule.

Pickwick v. *Gibbes* (1839, 1 Beav. 271) and *Coventry* v. *Higgins* (1844, 14 Sim. 30) dissented from.—RE PALFREEMAN, *Sargant, J.*, 456; 1914, 1 Ch. 877.

27. *Life tenant—Power to apply corpus for his own benefit—Appointment of whole estate.*—A testatrix, by her will, gave her estate to trustees upon trust to pay certain income to her husband during his life, and subject to this provsion she gave the whole of her estate on certain charitable trusts. She also gave her husband power to apply such portion of the corpus as he should think fit for his own use and benefit,

The husband, having executed a deed-poll appointing the corpus of the estate to himself for his own absolute use and benefit,

Held, that he became absolutely entitled to the whole estate.—RE RYDER, *Warrington, J.*, 556; 1914, 1 Ch. 865.

28. *Life-tenant of residue—Personal assets—Debts—Legacies—Duties—Adjustment of accounts between tenant for life and remaindermen.*—The so-called rule in *Allhusen* v. *Whittell* is not applicable indiscriminately. It is only a rule formed on the broad equitable principle that where residue is limited to persons in succession their successive enjoyment shall be an enjoyment of the same fund, and it must not be used to work hardship to the tenant for life, as it would undoubtedly do in a case like that before the court, where its application would deprive the tenants for life of a considerable amount of income by reason of the large disbursements for estate duty, &c., made within the first year.—RE MCEWEN, *Sargant, J.*, 82; 1913, 2 Ch. 704.

29. *Scotch form—Disposition of English land—Use of technical words*—Lex loci.—A testator disposed of his Scotch and English estate, real and personal, by a trust disposition and settlement in Scotch form. The testator made use of technical terms which, according to English law, create an estate in tail male in land, but which according to Scotch law do not have that effect.

Held, that the testator created an estate in tail male in the English lands.—RE MILLER, *Warrington, J.*, 415; 1914, 1 Ch. 511.

30. *Tenant for life—Remainderman—Deer—Consumable things—Gift over—Validity of.*—A herd of tame deer was bequeathed to trustees for the use of the person for the time being entitled to the occupation of certain real estate, and after her death to the use of the person who should then under the will become entitled to the estate. The tenant for life had from time to time purchased fresh deer to improve the stock for the purpose of maintaining the herd. On the trial of an interpleader issue, where the execution creditor of the tenant for life claimed the deer as belonging to the class of things *quæ ipso usu consumuntur*,

Held, that the tenant for life was not the absolute owner of the herd, and the fresh purchases became subject to the trusts of the will.—WHITE *v.* PAINE, *K.B.D.*, 381.

31. *Tenant for life and remaindermen—Preference shares—Cumulative preferential dividends—Unpaid dividends—Death of tenant for life—Arrears—Future dividends—Apportionment.*—Preference shares carrying a fixed cumulative preferential dividend were bequeathed in trust for a tenant for life and afterwards for remaindermen. No dividend was declared or paid during the life-tenancy.

Held, that the executors of the tenant for life were not entitled to have the arrears made good out of future preferential dividends.—RE SALE, *Astbury, J.*, 220; 1913, 2 Ch. 697.

32. *Trust for conversion—Power to postpone—Estate not realised—Advances to children—Principle of ascertaining income pending distribution.*—A testator by his will left his residuary estate to trustees to sell and convert, and to stand possessed of the proceeds on trust for six of his children in equal shares. Advances were made to children by the testator before, and by the trustees after, his death. The trustees had power to postpone realisation, and had not been able to realise the estate. For the purpose of ascertaining the annual income of the estate pending realisation and distribution, the trustees added four per cent. on the amounts advanced to children and distributed one-sixth of this amount to each child less four per cent. on the amount advanced to any child.

Held, following *Re Poyser, Landon* v. *Poyser* (1908, 1 Ch. 828), that the method adopted by the trustees was correct.—RE CRAVEN, *Warrington, J.*, 138; 1914, 1 Ch. 358.

33. *Trust for conversion—Power to postpone conversion—Shares in company—Right of beneficiary to call for transfer.*—Trustees of a will, by which property was settled upon trust for sale with power to postpone conversion and to retain investments, were requested by beneficiaries whose interests had vested in possession to transfer their shares to them, but they refused to do so on the ground that the property consisted of shares in a company, and that the transfer might affect their voting powers in the management of the company and the value of other beneficiaries interests.

Held, that the beneficiaries were entitled to such transfer, and that the power to postpone conversion did not justify the trustees in their refusal.—RE MARSHALL, *C.A.*, 118; 1914, 1 Ch. 192.

See also Accumulations, Charity.

WORKMEN'S COMPENSATION :—

1. *Approved society—Workman apparently suffering from after effects of accident—"Unreasonably refuses or neglects to take proceedings"—Proceedings taken by society in workman's name—National Insurance Act*, 1911 (1 & 2 *Geo.* 5, *c* 55), *s.* 11 (2),—A workman met with an accident, for which he was medically treated, and received compensation during three weeks, then returning to work. Six months later he had a recurrence of the symptoms which followed the accident, and underwent an operation, which produced incapacity for three months, during which time he received 10s. a week from his approved society, under the National Insurance Act, 1911. The society, owing to the illness being apparently the effect of the accident, sent the workman a form of questions to be answered by him, which he returned having stated therein his opinion that the illness he was then suffering from was not due to the accident. The society having taken proceedings against the employer, and failed,

Held, that the workman had not unreasonably refused or neglected to take proceedings to enforce his claim.—RUSHTON *v.* SKEY & Co., *C.A.*, 685.

2. *Average weekly earnings—Concurrent contract of service—Rule of company requiring exclusive services of workman—Employment in spare time—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 58), *Schedule I.* (2) (*b*).—A platelayer employed by a railway company was also engaged each evening at a weekly wage as check-taker at a theatre. The rules of the company required all its workmen to devote themselves exclusively to the company's service.

Held, that this was a regulation binding on the workman during his regular hours of work, that it was not part of the contract between the workman and the company that he should not be at liberty to earn anything in his spare time, and that the earnings from the theatre were under a concurrent contract of service within Schedule I. (2) (*b*), and must be added to the wages received from the company for the purposes of computing compensation for accident.—LLOYD *v.* MIDLAND RAILWAY, *C.A.*, 249; 1914, 2 K. B. 53.

3. *Course of employment—Agreement by employer to give workman information enabling him to supplement his earnings—Services of workman not temporarily lent—Independent contract—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 58), *ss.* 1, 13.—A workman was engaged by the lessee of a theatre to do work which occupied him part of the morning and the whole of each evening. For this he was paid a weekly wage, and given early information as to the movements of theatrical performers, so as to enable him to contract with them for the moving of their luggage to and from the railway

station at the beginning and end of each week. While removing luggage in the performance of one of these contracts he met with injury by accident.

Held, that he was not under the control of the lessee at the time or temporarily lent to another person, but an independent contractor, and therefore, that the accident did not arise out of or in the course of his employment.—HUSCROFT *v.* BENNETT, *C.A.*, 284.

4. *Course of emp'oyment—Assault on yard foreman by customer—Risk of assault—Customer a member of a rough class of men—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 58), *s.* 1 (1).—A yard foreman in the employment of furniture removers who engaged casual labour for their own work, and also let out vans on hire, died as the result of a violent assault made upon him by a man belonging to the known rough class of casual labourers, but who on this occasion was an intending customer for a van which he came too late to obtain. There was evidence that foremen in the trade ran considerable risk of assault from men who applied to them for work, and who failed to obtain it.

Held, that the death was caused by accident arising out of the employment.

Mitchinson v Day Brothers (1913, 1 K. B. 603) distinguished.—WEEKES *v.* STEAD & Co., *C.A.*, 633.

5. *Course of employment—Book keeper in course of employment killed in crossing railway line at station—Risk added by defiance of company's rules—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 58), *s.* 1 (1).—A book-keeper and manager employed by a builder had in the course of his employment to travel daily a short distance by train to a station near which his employer lived, and where his work lay. On arrival, in order to save time, instead of using the footbridge provided for passengers, he used to cross the line on the level. The rules of the company prohibited this practice, but they were not enforced by the station-master, and it was adopted by many other people, including the employer himself. One day, in so crossing the line, the workman was knocked down and killed by an express train.

Held, that the accident did not arise out of the employment.—PRITCHARD *v.* TORKINGTON, *C.A.*, 739.

6. *Course of the employment—Breach of rule—Miner doing shot-firer's work—Workmen's Compensation Act*, 1906, (6 *Ed.* 7, *c.* 58), *s.* 1 (1).—A duly appointed shot-firer was in the habit, unknown to the management and in breach of regulations, of delegating to miners working in his shift the coupling of the cable to the charge. No such practice was proved to exist so far as regarded the other shot-firers in the mine. A miner who worked in the shift where this practice obtained, after connecting the cable to the charge, was proceeding to a place of safety in reliance upon the shot-firer ascertaining that he had taken shelter before the shot was fired, when the shot-firer fired the shot and he was injured. It was proved that there was no likelihood of danger to a miner connecting the detonator wire to the cable. The arbitrator found that what the applicant did was not the cause of the accident, and that the accident therefore arose out of and in the course of his employment. Accordingly, he made an award in his favour.

Held, that the award was right.

Decision of Court of Session (50 Sc. L. R 455; 1913, S. C. 662, 6 B. W. C. C. 435) reversed.—SMITH *v.* FIFE COAL Co., *H.L.*, 533.

7. *Course of employment, but due to unwise and dangerous act—Act not done for workmen's but for employer's benefit—Liability of employer.*—A workman employed to perform work which consisted in stacking sacks by manual labour, devised a means of expediting the work and saving time, which involved making an unauthorized use of motive power. This mode of doing the work was unknown to the employers, or it would have been stopped, as involving the probability of an accident.

Held, affirming decision of Court of Appeal (57 SOLICITORS' JOURNAL, 264; 6 B. W. C. C. 245), that the workman was acting outside the scope of his employment, and the employers were not liable.

Semble, if the accident had proved fatal, the employers would have been liable.—PLUMB *v.* COBDEN FLOUR MILLS Co., *H.L.*, 184; 1914, A. C. 62.

8. *Course of employment—Charwoman injured by fall in the street—No special risk incidental to employment—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 58), *s.* 1 (1).—A charwoman employed regularly on every Friday was asked by her employers to assist in house-work, giving such time as she could spare, every morning and evening, for a fortnight. On one of these days (not a Friday) she was sent out to post a letter, and while going a short distance to the post office slipped on a banana skin and broke her ankle.

Held, that the accident did not arise out of the employment.

Dictum of Cozens-Hardy, M.R., in *McDonald* v. *Owners of Steamship Banana* (1908, 2 K. B. 926), explained.—SHELDON *v.* NEEDHAM, *C.A.*, 652.

9. *Course of employment—Collier returning home from work by train provided by employers—Attempt to alight from train in motion—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 58), *s.* 1 (1).—A colliery company arranged with a railway company for the latter to provide a train, free of charge, to colliers, to carry them between the mine and the town where they lived. A collier returning from work, with the object of taking a short cut home, jumped from the moving train some distance before it reached the platform at which he was expected to alight, and was seriously and permanently injured.

Held, that the accident did not arise out of the employment.

Plumb v. *Cobden Flour Mills Co.* (*Limited*) (*ante*, p. 184; 1914, A. C. 62) applied.—PRICE *v.* TREDEGAR IRON AND COAL Co., *C.A.*, 632.

10. *Course of employment—Unexplained drowning of ship's cook in harbour—Inference from facts—Workmen's Compensation Act*, 1906, *s.* 1 (1).—A cook on a steamship, having no work to do till evening when the ship was in harbour, spent the day in his bunk. At 4 p.m. he was told to get up to make tea, and he was not seen again; at 5.30 he was found to be missing; the next day his body, dressed in his underclothes, was found in the sea near the place where the ship had been. He was never seen to be the worse for drink, but was subject to nausea, and had often been seen vomiting over the side of the ship. The Sheriff-substitute held that he had accidently fallen overboard, and that the accident arose out of and in the course of his employment. The Second Division of the Court of Session set aside the award.

Held (Lords Atkinson and Dunedin dissenting), that there was evidence on which the Sheriff-substitute could find as he did. An applicant has to prove his case, but he has not to exclude by evidence every possibility which might be suggested.—LENDRUM *v.* AYR STEAM SHIPPING Co., *H.L.*, 737.

11. *Death from pneumonia following on chill—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 58), *s.* 1 (1).—Owing to a breakdown in a shaft of a pit owned by the respondents, a number of miners were ordered to the surface by another shaft. The men working in the pit worked by this other shaft were, however, taken up first. Consequently the miners sent over to that pit were kept waiting about some one and a half hours. There was a cold down draught of air, and the husband of the appellant contracted a chill. The chill was followed by pneumonia, and he died.

The arbitrator found that deceased man died from an accident, and awarded his widow compensation.

Held, that the award was rightly made.

Decision of Court of Session (1913, 1 Sc. L. T. 174, 50 Sc. L. R. 415, 6 B. W. C. C. 416), which set aside the award on the ground that death was not due to an accident, reversed.

Alloa Coal Co. (*Limited*) v. *Drylie* (1913, 50 Sc. L. R. 350, 6 B. W. C. C. 398) followed.—COYLE *v.* WATSON, *H.L.*, 533.

12. *Dependant—Claim by widow and six children—£300 paid into court accepted by children with knowledge of widow, who renounced all claim under the Workmen's Compensation Act—Right of the widow to claim damages for herself—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 58), *s.* 1 (2) (*b*).—A workman, who was killed as the result of an accident arising out of and in the course of his employment, left a widow and six children. A claim having been made in respect of the widow and six children as dependants, the employers paid the maximum amount for which they could be held liable under the Workmen's Compensation Act, namely, £300, into court. The children, acting by their next friend, applied to have the whole of the compensation apportioned between them, the widow stating that she renounced her right in the money in court, and made no claim to any share in it. Subsequently the widow commenced an action against her late husband's employers claiming damages under Lord Campbell's Act. The defendants submitted that the action was not maintainable by reason of section 1 (2) (*b*) of the Workmen's Compensation Act, 1906.—CODLING *v.* MOWLEM & Co., *C.A.*, 783.

13. *"Dependant"—Posthumous illegitimate child—Evidence—Admissibility of statements by deceased to prove intention to maintain—Workmen's Compensation Act*, 1906, *s.* 13.—A posthumous illegitimate child of a deceased workman claimed to be a dependant. The only evidence of an intention to maintain it consisted of statements of the deceased. The county court judge admitted evidence of these statements, and upon that evidence found that the child was a dependant.

Held, that although statements of a deceased man with regard to the paternity of a child must, no doubt, be carefully weighed, there was no principle of law which would deny their admissibility *quantum valeant*. The evidence of paternity was admissible on

the issue of dependency as shewing that, but for the premature death of the father, he would have married the girl before the birth of the child, which then, as his legitimate child, he would have been legally bound to maintain.

Decision of Court of Appeal (57 SOLICITORS' JOURNAL, 301; 1913, 2 K. B. 130, 6 B. W. C. C. 142) reversed.—LLOYD *v.* POWELL DUFFRYN STEAM COAL CO., *H.L.*, 514.

14. *Disease and death caused by accident—Quite healthy before accident—After effects of operation the immediate cause of death—Workmen's Compensation Act*, 1906, *s.* 1 (1).—A workman received a heavy blow on his back by accident in the course of his employment and was incapacitated for three months. He was able to resume work for six months, but was never as well as he had been before the accident. He was operated on for acute kidney trouble and the operation was successful, but revealed the possibility that other causes than the accident might have brought about his condition. He ultimately died from the after effects of a subsequent operation intended to heal the scar caused by the first one.

Held, that having regard to the fact that he had always been in good health before the accident, there was evidence from which the inference that his death was thereby caused was properly drawn.—LEWIS *v.* PORT OF LONDON, *C.A.*, 686.

15. *Course of employment—Disobedience to orders—Work performed in dangerous manner—Workmen's Compensation Act*, 1906, *s.* 1 (1).—A boy employed to mind machinery in a rolling mill was, contrary to the rules, sitting at his work, when a fellow workman touched him on the shoulder causing him to turn round. The action resulted in his catching his foot in the rollers and being seriously injured. Had he been standing instead of sitting no accident would have happened.

Held, that the accident was caused by negligence and disobedience, but arose out of the employment, and the employers were liable.—CHILTON *v.* BLAIR, *C.A.*, 669.

16. *Course of the employment—Duty of farm bailiff to go round farm buildings at night—Death caused by fall while imprudently trying to get through window to obtain key—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 48), *s.* 1 (1).—A farm bailiff made it his practice to go round the farm buildings to see that their contents were safe, to lock them up, and return home with the keys the last thing at night. After being away from the premises for some hours, he was making his final round, and not having with him the key of a cowshed in which he had left another key he wanted to obtain, opened the window, vaulted on to the sill, and while reaching for the key fell and was killed.

Held that his death resulted from injury arising out of and in the course of his employment.—PEPPER *v.* SAYER, *C.A.*, 669.

17. *Course of employment—Sailor returning to ship from visit ashore to purchase provisions—Obligation to furnish own provisions—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 58), *s.* 1 (1)—*Merchant Shipping Act*, 1906 (6 *Ed.* 7, *c.* 48), *s.* 25.—A member of the crew of a coasting steamer, who were engaged under articles requiring them to furnish their own provisions, went ashore with the object of buying a stock of provisions for himself. Having done so, he fell off a quay in the dark and was drowned, while on his way to rejoin the ship.

Held (Evans, P., dissenting), that the accident did not arise out of the employment.—PARKER *v.* OWNERS OF "BLACK ROCK," *C.A.*, 285; 1914, 2 K. B. 391.

18. *Course of employemt—School teacher—Killed by pupils—Boys known to be rough and unruly—Risk incidental to employment—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 58), *s.* 1 (1).—An assistant schoolmaster in an industrial school incurred the enmity of some of the boys by stopping them playing hurley in the schoolyard. In pursuance of a pre-arranged plan, he was assaulted by them, and died from the effects of the injuries he received. At the coroner's inquest a verdict of manslaughter was returned.

In a claim for compensation by the mother of the deceased man as a dependant,

Held, by Lord Haldane, C., and Lords Loreburn, Shaw, and Reading (Lords Dunedin, Atkinson and Parker dissenting) that the deceased met with his death by "accident" within the meaning of section 1 (1) of the Workmen's Compensation Act, 1906.

Semble, an "accident" within the meaning of section 1 (1) includes any injury which was not expected or designed by the workman himself.

Decision of Court of Appeal (47 Ir. L. T. R. 151) affirmed.—TRIM JOINT DISTRICT SCHOOL *v.* KELLY, *H.L.*, 493.

19. *Course of the employment—Seamen leaves ship after work ends by plank resting on permanent quay ladder—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 58), *s.* 1 (1).—A seaman, employed on a small coasting vessel, which was moored against the quay of a harbour, finished work for the day and prepared to go home to sleep. To leave the ship he had to cross the plank which was laid between the ship and a ladder fixed to the side of the quay belonging to the harbour authority. He crossed the plank safely and ascended a few rungs of the ladder, when he slipped and fell into the harbour. The plank was the only means of access to the quay.

Held, that the accident arose in the course of the employment.

Decision of Court of Appeal (82 L. J. K. B. 1058, 6 B. W. C. C. 583, 29 L. T. R. 704) reversed.

Cook v. *Owners of Steamship Montreal* (57 SOLICITORS' JOURNAL, 282; 6 B. W. C. C. 220) distinguished.—WEBBER *v.* WANSBROUGH PAPER CO., *H.L.*, 685.

20. *Course of employment—Seaman returning on board ship drunk falls from gangway—No special risk to a sober person—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 58), *s.* 1 (1).—A sailor on shore with leave returned to his ship at night in an intoxicated condition, but able to walk, though unsteadily. While mounting the gangway placed by the side of the ship, he let go the rope, overbalanced himself, fell on to the quay below and was killed.

Held (Pickford, L.J., dissenting), that the accident did not arise out of the employment.—NASH *v.* OWNERS OF "RANGATIRA," *C.A.*, 705.

21. *Failure to give notice of accident—Belief that effects of accident would pass away—"Mistake or other reasonable cause"—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c* 58), *s.* 2 (1) (a).—A workman fell from a stable loft on to his head, and for three days afterwards was unable to work. Upon return to work he suffered continuously from headache, and after some months became incapacitated and seriously ill. No written notice, however, was given until a year after the accident. The county court judge found that the failure to give notice was occasioned by mistake or other reasonable cause, namely, the belief that he would soon recover, which lasted until he was too ill to give notice.

Held, following *Webster* v. *Cohen* (58 SOLICITORS' JOURNAL, 244; 6 B. W. C. C. 92), that this was a misdirection, and that the want of notice was not occasioned by mistake.—CLAPP *v.* CARTER, *C.A.*, 232.

22. *Industrial disease—Lead poisoning—Death due to "nature of employment"—"Gradual process"—No evidence of death being accelerated by work under last employer—Workmen's Compensation Act*, 1906, *s.* 8.—Where the death or disablement of a workmen is due to an industrial disease, such as lead poisoning, and no presumption against the employer arises by reason of his having been employed in a scheduled occupation at or immediately before the time it occurred, it is not enough to prove, as against the last employer, that he was exposed to the risk of contracting or accelerating the disease at some time within the previous twelve months; it must be shewn either that he actually contracted the disease in the employment, or, if he was previously affected, that he thereby accelerated its progress. "Nature of any employment" in section 8 (1) means "nature of the particular employment" in which the workman was employed.—DEAN *v.* RUBIAN ART POTTERY CO., *C.A.*, 302; 1914, 2 K. B. 213.

23. *Recording agreement for compensation—Insured person—Notice of agreement sent to workmen's approved society—"Parties interested"—Alleged inadequacy of lump sum—Right of approved society to intervene and object—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 58), *Schedule II.* 9 (*a*), (*d*)—*Consolidated Workmen's Compensation Rules*, 1913, *rr.* 44 (3), 51 (5)—*National Insurance Act*, 1911, *s.* 11.—Where a workman and his employer seek to record a memorandum of agreement into which they have entered for the payment of compensation under the Act, and notice of such agreement is sent, in pursuance of the National Insurance Act, 1911, s. 11, to the approved society in which the workman is insured, the society does not thereby become an "interested party" within Schedule II. (9) of the Workmen's Compensation Act, and has no right to intervene and object, on the ground of inadequacy or any other ground, to the agreement being recorded.

Rule 44 (3) of the Consolidated Workmen's Compensation Rules, 1913, so far as it purports to make the society an "interested party," is *ultra vires*.

Appeal in all matters coming under Schedule II., whether arising upon arbitrations or not, lie direct to the Court of Appeal.—BONNEY *v.* JOSHUA HOYLE & SONS, *C.A.*, 268; 1914, 2 K. B. 257.

24. *Redemption of weekly payment—"Incapacity permanent"—Injury to infant permanent, but probable increase in earnings*

after 21—*Admissions—Re-trial—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 58), *Schedule I.* (17).—An apprentice under 21 was injured by accident, losing the sight of one eye, and becoming almost blind in the other. An agreement was recorded for the payment of 8s. a week, the full amount of his then wages. A year later, but six months before the workman was 21, the employers applied to redeem on the basis of the then weekly payment. It was admitted by the workman's next friend that the incapacity was permanent, but no evidence was given on the point. The county court judge found that the incapacity was not permanent, on the ground that the weekly wages had not reached a condition of stability, and held he was not bound by the limit of 75 per cent. of the annual value of the weekly payment, but that the amount of the award was in his discretion.

Held, to be a misdirection. Case remitted for a new trial.—MARSHALL *v.* PRINCE, *C.A.*, 721.

25. *Redemption or diminution of weekly payment, or both combined—Right to withdraw application for redemption before hearing—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 58), *Schedule I.* (16) (17).—An application for an award under the Workmen's Compensation Act, 1906, may be withdrawn at any time before the hearing by the party making it upon payment of the costs incurred by the respondent.

Calico Printers' Association v. *Booth* (1913, 3 K. B. 652) explained.—GOTOBED *v.* PETCHELL, *C.A.*, 249; 1914, 2 K. B. 36.

26. *Review of weekly payments—Date from which weekly payments may be ended—Workmen's Compensation Act*, 1906, *Schedule I.*, 16.—An application to review a weekly payment under the Workmen's Compensation Act, 1906, was brought before an arbitrator, who found as a fact that the workman's incapacity for work had ceased on a date prior to the application to review being set down.

Held, that it was competent for the arbitrator to end or vary the employer's liability under the previously recorded award from the date on which he found as a fact that the workman's incapacity had ceased.

Decision of Second Division of the Court of Sessions reversed.

Donaldsons Brothers v. *Cowan* (1909, S. C. 1292, 46 S. L. R. 92, 2 B. W. C. C. 390) considered and overruled.—GIBSON & Co. *v.* WISHURST, *H.L.*, 592.

27. *Review of weekly payments—Liability of employer where accident enforces idleness, and idleness increases constitutional tendency to obesity—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 58), *Schedule I.*, 16.—A workman was injured, and payments, were made to him for some three years. On an application by the employers to review the weekly payments the matter was referred to a medical man chosen by the parties. He found that the workman had recovered from the direct, but not from the indirect, effects of his injury. The injury having thrown the man out of work for a time, his age—sixty-three years—coupled with his disposition to obesity, had told against him, so that from lack of continuity of activity he had become less and less fit for labour of any kind. He was not fitted to undertake any work other than that of a more or less sedentary character, such as that of a watchman.

Held, that the Sheriff-Substitute was right in finding that the chain of causation between the accident, the enforced idleness, the obesity, and the permanent incapacity for active work caused by such obesity was unbroken, and that the employers were liable to continue the weekly payments.

Decision of First Division of the Court of Session (51 Sc. L. R. 418) reversed.—TAYLOR & Co. *v.* CLARK, *H.L.*, 738.

28. *Sub-contracting—Course of principal's trade or business—"Work undertaken by the principal"—Accident while stacking timber delivered on principal's premises—Workmen's Compensation Act*, 1906 (6 *Ed.* 7, *c.* 58), *s.* 4.—A workman in the employ of a deal porter, who had contracted to unload a cargo of wood from a barge, cart it to the principal's premises, and there stack it, was injured by accident during the stacking process. The county court judge held, on the evidence, that the stacking was not "work undertaken by the principal."

Held, there was evidence upon which he could properly so find, and that the principal was not liable.—HOCKLEY *v.* WEST LONDON TIMBER AND JOINERY Co., *C.A.*, 705.

29. *Workman drawing sick benefit from approved society—Proceedings for compensation initiated by society—Retainer given by workman to solicitor—National Insurance Act*, 1911 (1 & 2 *Geo.* 5, *c.* 55), *s.* 11 (2).—A workman who had met with an accident applied for and obtained 10s. a week sick benefit from the approved society in which he was insured. The society took the view that the employer was liable, and its solicitors threatened him with proceedings. At a later date the workman signed and gave a retainer to the society's solicitors, who forthwith commenced proceedings. At the hearing, the county court judge, having read the correspondence, asked counsel for the workman whether he was instructed by the workman or by the society, and upon his declining to answer the question, dismissed the application without hearing the applicant's or any other evidence.

Held, that the application should not have been dismissed at that stage, but should have been heard, and the facts gone into.—ALLEN *v.* FRANCIS, *C.A.*, 753.

See also Bankruptcy, Insurance.

ADDENDA.

ALIEN ENEMY:—

1. *Business—London branch—British workmen employed—Principals fighting in the enemy's forces—Manager in enemy country—English assistant manager—No power to draw cheques—Power to appoint English assistant manager receiver and manager—Licence to trade.*—Where a large firm of alien enemies had a London branch, employing a hundred British workmen, the court appointed the English assistant manager of that branch to be receiver and manager on his undertaking (1) not to remit goods or money forming assets of the defendants' business to any hostile country; (2) to endeavour to obtain a licence from the Crown to trade.—RE BECHSTEIN (No. 1), *Vacation Court*, 863.

2. *Receiver of business—Licence to trade obtained on petition—Interference with receiver—Motion to commit—Undertaking.*—The English assistant manager of alien enemie's business of manufacturing pianos, having been appointed receiver and manager of such business, on his undertaking (1) not to remit goods or money forming assets of the business to any hostile country, and (2) to endeavour to obtain a licence from the Crown for the continuance of the defendants' business, moved to commit the president of the Piano Manufacturers' Association for writing a letter describing it as an unpatriotic act to do business with such firm, before such receiver had in fact obtained such licence—which he subsequently obtained—but after he had petitioned to obtain it.

Held, that the president must give an undertaking not to circulate in future any such letters during the continuance of the licence.—RE BECHSTEIN (No 2), *Vacation Court*, 864.

PRIZE LAW:—

1. *Shipping—Capture of enemy ship on high seas—Ignorance of declaration of war—Right of capture—Hague Conference*, 1907—*Convention VI., Article* 3—*Germany not a party to that article—Article not applicable—Condemnation.*—Where a German ship was captured by a British ship on the high seas after the outbreak of a war, of which it was admitted that the master of the ship had then no knowledge,

Held, that she could be confiscated as prize, because the German Empire had refused to be bound by Article 3 of Convention VI. of the Hague Conference, 1907, which decreed that such ships were merely liable to detention. Paragraph 10 of the Order in Council of the 4th of August dealing with reciprocal arrangements had no application to this case.—"THE PERKEO," *P.D.*, 852.

2. *Shipping—Enemy ship—Prize court—Outbreak of hostilities—Jurisdiction of Prize Court—Hague Conference*, 1907—*Convention VI., Articles* 1 *and* 2—*Supreme Court of Judicature Act*, 1891 (54 & 55 *Vict. c.* 53), *s.* 4—*Reciprocal arrangements—Right of alien enemy to appear in Prize Court—Sufficiency of affidavit—Detention of vessel pending further order.*—An enemy ship in a British port before the commencement of hostilities can be properly seized by the officers of the Crown.

Quaere, whether Article 2 of Convention VI. of the Hague Conference, 1907, depends upon Article 1, and comes into operation only if no days of grace were agreed upon within the meaning of Article 1.

Quaere, whether an enemy subject has right to appear in the Prize Court of this country.

An affidavit by a member of a firm who were agents for the shipowners, purporting to be filed on behalf of the owners, and setting out reasons why the ship should not have been seized, was held insufficient.

A detention order was made.—"THE CHILE," *P.D.*, 852.